

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

3 UNITED STATES OF AMERICA ) Docket No. A 12-CR-210 SS  
4 vs. )  
5 JOSE TREVINO-MORALES (3) )  
6 FRANCISCO ANTONIO )  
7 COLORADO-CESSA (6) )  
8 FERNANDO SOLIS-GARCIA (7) )  
9 EUSEVIO MALDONADO-HUITRON(11) )  
10 JESUS MALDONADO-HUITRON (18) ) April 19, 2013

9 TRANSCRIPT OF TRIAL ON THE MERITS  
10 BEFORE THE HONORABLE SAM SPARKS  
11 Volume 5 of 15

11 APPEARANCES:

12 For the United States: Ms. Michelle E. Fernald  
13 Mr. Douglas W. Gardner  
14 Assistant U.S. Attorneys  
15 816 Congress Avenue, Suite 1000  
16 Austin, Texas 78701

15 For Defendant Trevino- Mr. David M. Finn  
16 Morales: Milner & Finn  
17 2828 North Harwood Street  
18 Suite 1950, LB9  
19 Dallas, Texas 75201

18 Ms. Christie Williams  
19 Mills & Williams  
20 1112 South Rock Street  
21 Georgetown, Texas 78626

20 For Defendant Colorado- Mr. Mike DeGeurin  
21 Cessa: Mr. M. Andres Sanchez-Ross  
22 Foreman, DeGeurin & DeGeurin  
23 300 Main Street  
24 Houston, Texas 77002

23 Mr. John Parras  
24 Republic Bank Building  
25 1018 Preston, Floor 2  
Houston, Texas 77002



1	<b>I N D E X</b>				
2		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	<u>Witnesses:</u>				
4	Edward J. O'Dwyer	6	18		
5	Joshua P. Schenk	20	28	33	
6	Matthew S. Martin	34	42, 49	55	57
7	Jonathan Spaeth	58	71, 73	86	
8	Jane Eckert	86	112, 119		
9			128	129	133
10	Andrew Farabow	136	148		
11	Scott Thagard	155			
12					
13					<u>Page</u>
14	Proceedings adjourned				166
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**E X H I B I T S**

	<u>Offered</u>	<u>Admitted</u>
<u>Government's</u>		
#306	139	139
#318	13	13
#365	25	25
#365A through C	38	38
#370A through P	140	140
#379A through B	62	62
#403	97	97
#404	135	135
<u>Defendant Trevino-Morales'</u>		
#J-1	49	49

08:26:58 1 THE COURT: All right. We have a new interpreter this  
08:27:34 2 morning, and if you'll come forward and be sworn, please.

08:27:40 3 (Interpreter sworn.)

08:27:50 4 THE COURT: Your name, please.

08:27:52 5 THE INTERPRETER: Rosario Figueroa, R-O-S-A-R-I-O.

08:27:57 6 THE COURT: Thank you, ma'am. The record will reflect  
08:28:03 7 that the interpreter was so certified by the federal government  
08:28:09 8 as being federal district court interpreters.

08:28:15 9 Anything before we bring in the jury, counsel?

08:28:17 10 MR. GARDNER: Not from the government, your Honor.  
08:28:19 11 Thank you.

08:28:20 12 MR. DEGEURIN: Nothing.

08:28:21 13 THE COURT: Bring them in, John.

08:28:24 14 (Jury present.)

08:30:39 15 THE COURT: Members of the jury, since we met yesterday  
08:30:42 16 afternoon, has anyone attempted to talk to you about this case?

08:30:45 17 JURORS: No.

08:30:46 18 THE COURT: Have you talked to anyone about the case?

08:30:48 19 JURORS: No.

08:30:49 20 THE COURT: And have any of you learned anything,  
08:30:52 21 outside the presence of each other in this courtroom, about the  
08:30:54 22 case?

08:30:55 23 JURORS: No.

08:30:55 24 THE COURT: All right. Show negative responses to all  
08:30:58 25 questions by all jurors. You may call your next witness.

08:31:03 1 MR. GARDNER: Thank you, your Honor.

08:31:04 2 Your Honor, the government would call Special Agent Ed  
08:31:06 3 O'Dwyer. Special Agent Dwyer, this lady here in the teal suit  
08:31:15 4 will swear you.

08:31:16 5 (Witness sworn.)

08:31:29 6 THE COURT: If you'll please tell us your full name and  
08:31:35 7 spell your last name, please.

08:31:37 8 THE WITNESS: Certainly. My first name is Edward  
08:31:39 9 James. My last name is O'Dwyer, O, apostrophe, D-W-Y-E-R.

08:31:45 10 THE COURT: You may proceed.

08:31:49 11 EDWARD J. O'DWYER, called by the Government, duly sworn.

08:31:49 12 DIRECT EXAMINATION

08:31:49 13 BY MR. GARDNER:

08:31:50 14 Q. Thank you, your Honor.

08:31:50 15 Good morning, Special Agent O'Dwyer.

08:31:51 16 A. Good morning.

08:31:52 17 Q. You and I have met before, correct?

08:31:53 18 A. We have.

08:31:54 19 Q. Could you please introduce yourself to the jury and tell  
08:31:56 20 them what you do for a living?

08:31:57 21 A. Certainly. My name is Special Agent Edward O'Dwyer, special  
08:32:01 22 agent with Homeland Security Investigations in Laredo, Texas.

08:32:04 23 Q. And how long have you been an agent, sir?

08:32:07 24 A. I've been an agent -- I've been employed by the agency since  
08:32:10 25 August of 2010, graduated the academy in February of 2011, and

08:32:16 1 been assigned to Laredo ever since.

08:32:17 2 Q. And prior to that, did you have any law enforcement  
08:32:19 3 experience?

08:32:20 4 A. Prior to that, I was a border patrol agent in Kingsville,  
08:32:23 5 Texas for just a little bit over three years.

08:32:24 6 Q. And, sir, what group or division do you work for with the  
08:32:29 7 Department of Homeland Security in Laredo?

08:32:33 8 A. The Homeland Security Investigations Office that I'm  
08:32:36 9 assigned to, I'm assigned to a bulk-cash smuggling group. We  
08:32:43 10 work narcotics. We also are mainly assigned to bulk-cash  
08:32:48 11 smuggling, which involves the -- obviously when the drugs come  
08:32:52 12 into the United States, the narcotics come into the United  
08:32:54 13 States, they're sold, and that money needs to make it back to the  
08:33:00 14 country of origin of those drugs, or wherever the  
08:33:04 15 drug-trafficking organizations or cartels are led from. So the  
08:33:10 16 cash goes back in various manners, probably the simplest of which  
08:33:14 17 is to smuggle the cash in bulk back to those countries.

08:33:19 18 Q. And are you familiar with the term "structure"?

08:33:22 19 A. I am.

08:33:22 20 Q. And could you define that term for the jury, please?

08:33:25 21 A. Structuring, when a person enters or leaves a country,  
08:33:31 22 there's a reporting requirement that if you have in your  
08:33:35 23 possession more than \$10,000 in cash, or what they call monetary  
08:33:40 24 instruments -- if you're carrying more than \$10,000 on you, you  
08:33:44 25 need to declare that to the Customs and Border Protection

08:33:47 1 officers that's at the airport or the border, whatever the  
08:33:50 2 port-of-entry is.

08:33:52 3 Oftentimes, in order to -- and it's not like they take  
08:33:57 4 -- they'll -- if you have more than \$10,000, they don't take that  
08:34:00 5 money away, they don't tax it, but it's just a reporting  
08:34:03 6 requirement. And a form is completed that you enter or exit the  
08:34:09 7 country with more than \$10,000. Oftentimes, to avoid that, to  
08:34:14 8 avoid that reporting requirement, people will either on their own  
08:34:20 9 travel back and forth multiple times with quantities under  
08:34:24 10 \$10,000 to avoid that requirement, or they divide up amongst many  
08:34:31 11 people into quantities less than \$10,000 to avoid the reporting  
08:34:35 12 requirement.

08:34:36 13 However, to do so, if you divide it up like that to  
08:34:39 14 avoid that reporting requirement, that, too, is illegal.

08:34:42 15 Q. And does your bulk-cash smuggling group investigate  
08:34:47 16 individuals attempting to structure funds into the United States?

08:34:50 17 A. Yes, we do.

08:34:52 18 Q. And are you familiar with the term "mule"?

08:34:54 19 A. Yes.

08:34:55 20 Q. As it relates to structuring?

08:34:57 21 A. Yes.

08:34:57 22 Q. Okay. Could you define the term "mule" for the ladies and  
08:35:02 23 gentlemen of the jury?

08:35:02 24 A. A mule in whether it's cash or any type of smuggling, I  
08:35:05 25 mean, is a person that is hired to transfer something. In our



08:35:12 1 business it would be across the border. But a mule in the sense  
08:35:18 2 that they're tasked with the carrying of whatever the merchandise  
08:35:22 3 is, whether that be narcotics, or cash, or whatever the  
08:35:26 4 contraband.

08:35:27 5 Q. And so, have you encountered mules carrying cash less than  
08:35:32 6 \$10,000 into the United States?

08:35:34 7 A. I'm sorry?

08:35:35 8 Q. Have you encountered in your investigations just generally  
08:35:38 9 mules transporting less than \$10,000 into the United States?

08:35:41 10 A. Yes, I have.

08:35:42 11 Q. All right. If you will, could you just provide the jury a  
08:35:45 12 generic example of how someone would use mules to, say, transport  
08:35:52 13 \$50,000 in the U.S.?

08:35:55 14 A. I mean, again, to use a mule scenario for \$50,000, you'd  
08:36:03 15 have to divide it up into quantities of less than \$10,000 and so,  
08:36:15 16 into quantities of -- if it was \$5,000 apiece and you have ten  
08:36:20 17 people carrying \$5,000 apiece, that would be a way to structure  
08:36:24 18 the importation of \$50,000 of cash into the U.S.

08:36:29 19 Q. And did you become associated with this case through an  
08:36:33 20 investigation of an individual who you believed was structuring  
08:36:36 21 money into the United States?

08:36:38 22 A. Yes.

08:36:38 23 Q. And who was that individual, please?

08:36:40 24 A. That individual was a person by the name of Victor Manuel  
08:36:43 25 Lopez.

08:36:44 1 Q. Could you please pull up 335? And, Special Agent O'Dwyer,  
08:36:54 2 I'm showing you a picture of Government's Exhibit 335H. Do you  
08:36:57 3 recognize that individual?

08:36:58 4 A. I do.

08:36:58 5 Q. And who do you recognize him as?

08:37:00 6 A. It's Victor Manuel Lopez.

08:37:03 7 Q. And how did Mr. Lopez come to your attention?

08:37:09 8 A. On was it July 22nd of 2011, I received a phone call from  
08:37:14 9 the Laredo port-of-entry bridge one, which is a bridge downtown  
08:37:20 10 Laredo. The kind of an old -- their oldest, smallest bridge.  
08:37:26 11 It's the only bridge in Laredo that you can cross as a  
08:37:29 12 pedestrian, so there's a lot of pedestrian traffic and a little  
08:37:34 13 bit of vehicle traffic. On this morning, they called me to --  
08:37:37 14 Customs and Border Protection officers called to inform me that  
08:37:40 15 they had stopped --

08:37:41 16 MS. WILLIAMS: Object to hearsay.

08:37:43 17 MR. GARDNER: It's not for the truth of the matter,  
08:37:45 18 your Honor. It's to frame his actions.

08:37:48 19 THE COURT: Well, it's after the call. You can ask  
08:37:53 20 what he did.

08:37:53 21 Q. (BY MR. GARDNER) So you received a call from Border Patrol,  
08:37:56 22 correct?

08:37:57 23 A. Customs and Border Protection. The bridge personnel.

08:38:00 24 Q. And based on that call, did you go down to the bridge?

08:38:05 25 A. I did.

08:38:06 1 Q. And could you pick up, what happened after that?

08:38:09 2 A. Certainly. At the bridge, I interviewed the three female  
08:38:14 3 citizens of Mexico that had attempted to cross into the U.S. on a  
08:38:19 4 valid -- they had visas to do so. And they had -- each of them  
08:38:22 5 had with them \$9,900.

08:38:26 6 Q. Okay. Let me ask a question there. Is that consistent with  
08:38:29 7 what you just testified to as being structuring?

08:38:31 8 A. It is.

08:38:32 9 Q. And so, after seeing each one of these females have \$9,900  
08:38:36 10 each, what did you do then?

08:38:38 11 A. Well, not only the \$9,900, they also had a flight itinerary  
08:38:44 12 to El Paso, Texas that took them to El Paso that day and back and  
08:38:47 13 forth in the same day through Houston on Continental Airlines.  
08:38:54 14 We interviewed them. The first individual Veronica Duran had  
08:39:05 15 been given the money by a person she only knew as Victor. She  
08:39:12 16 was friends with Victor's wife, had been asked by Victor on the  
08:39:16 17 day before, on the 21st of July, if she would be willing to --

08:39:20 18 MS. WILLIAMS: Your Honor, excuse me, I object to  
08:39:21 19 narrative form of testimony.

08:39:23 20 MR. GARDNER: I can break it up a little bit.

08:39:25 21 MR. ESPER: I also think, your Honor, I would object  
08:39:27 22 that there's hearsay coming in here about what this female is  
08:39:30 23 telling this agent.

08:39:31 24 THE COURT: May be.

08:39:34 25 Q. (BY MR. GARDNER) Let me break it up a little bit, Special

08:39:37 1 Agent.

08:39:37 2 A. Certainly.

08:39:38 3 Q. So after you interviewed these females with all the cash,  
08:39:43 4 did you take their itinerary?

08:39:45 5 A. I did.

08:39:46 6 Q. And did there appear -- or were there any other names  
08:39:50 7 appeared on the itinerary?

08:39:51 8 A. Only the only itinerary was given. But we contacted -- or  
08:39:55 9 as they had in their possession. They only had their individual  
08:39:58 10 itineraries. But we contact --

08:39:59 11 MR. MAYR: Objection. Nonresponsive.

08:40:01 12 THE COURT: Listen to the question. You've been on the  
08:40:02 13 stand before.

08:40:03 14 THE WITNESS: Yes, sir.

08:40:03 15 THE COURT: Answer the question. You've got plenty of  
08:40:05 16 lawyers, give plenty of questions.

08:40:08 17 THE WITNESS: Certainly.

08:40:09 18 Q. (BY MR. GARDNER) What did you do with the itineraries after  
08:40:11 19 you obtained them from these three females?

08:40:13 20 A. We used the record locator where the reservation number on  
08:40:17 21 the itinerary to contact -- and with that, contacted Continental  
08:40:23 22 Airlines through a subpoena to obtain a copy of the full  
08:40:28 23 reservation.

08:40:29 24 Q. And did you, in fact, obtain a copy of the full reservation?

08:40:32 25 A. Yes, we did.

08:40:33 1 Q. All right. I'm showing you Government's Exhibit 318. Do  
08:40:41 2 you recognize that, sir?

08:40:41 3 A. I do.

08:40:43 4 Q. And how do you recognize it?

08:40:44 5 A. It's the response to the subpoena that was provided by  
08:40:48 6 Continental Airlines.

08:40:50 7 Q. And it has an attached business record affidavit to it?

08:40:53 8 A. Correct.

08:41:43 9 MR. GARDNER: Your Honor, the government offers Exhibit  
08:41:45 10 318.

08:41:46 11 MR. ESPER: No objection.

08:41:47 12 THE COURT: All right. 318's received.

08:42:00 13 Q. (BY MR. GARDNER) Sir, I'm showing you the second page, Bates  
08:42:11 14 stamp 621103. Sir, these names I'm highlighting and the three on  
08:42:51 15 the bottom, are those the three women you encountered that  
08:42:54 16 morning?

08:42:54 17 A. Yes, sir.

08:42:55 18 Q. And did you encounter either Juan Francisco Javier Nunez or  
08:42:59 19 Victor Manuel Lopez crossing the border?

08:43:02 20 A. I did not encounter them. No.

08:43:04 21 Q. And so, what happened to the cash?

08:43:07 22 A. The cash was abandoned by the three females and seized by  
08:43:12 23 Customs and Border Protection at the bridge.

08:43:14 24 Q. And with respect to this flight, were you aware if either  
08:43:20 25 the women or Victor Manuel Lopez or Mr. Nunez took that flight?

08:43:25 1 A. None of them took the flight that's notated on, I believe,  
08:43:29 2 the first page of that response from Continental.

08:43:37 3 Q. Now, with respect to Victor Manuel Lopez, what did you do  
08:44:00 4 following that?

08:44:01 5 A. Following that, we started to -- we examined his crossing  
08:44:12 6 history and on occasion, would have him stopped at the bridge  
08:44:19 7 when he was entering the U.S. He'd enter generally every day,  
08:44:22 8 sometimes as many as three times a day from Nuevo Laredo, Mexico.  
08:44:28 9 And on occasion, we would have him stopped to see -- to get a  
08:44:33 10 formal declaration of how much money he had with him.

08:44:37 11 MR. ESPER: Excuse me, your Honor, could we get a  
08:44:38 12 timeframe here?

08:44:39 13 Q. (BY MR. GARDNER) Did you hear what Mr. Esper asked you, a  
08:44:42 14 timeframe on the crossings during the investigation?

08:44:47 15 A. At that time of July of 2011, Victor was crossing generally  
08:44:52 16 every day and sometimes up to as many as two and three times a  
08:44:56 17 day.

08:44:57 18 Q. Now, I want to go back to this. This is the first page,  
08:45:01 19 621102. Now, this reservation, does it reflect that all five of  
08:45:13 20 those people were on the same reservation?

08:45:17 21 A. It does. This is a copy of the reservation under the record  
08:45:22 22 locator number, which is the third number in the third line down,  
08:45:27 23 RLOC. And that record locator is a -- essentially a reservation  
08:45:32 24 number, and all those five people are listed under that  
08:45:35 25 reservation.

08:45:35 1 Q. Now, earlier, you said no one took the flight?

08:45:39 2 A. Correct. And that's where it's notated. Yes.

08:45:43 3 Q. Now, in addition to subpoenaing the records of this  
08:45:47 4 particular flight, what else did the subpoena request?

08:45:53 5 A. It requested previous flights. And both Continental and  
08:46:01 6 American Airlines, the two airlines serving Laredo, were  
08:46:04 7 subpoenaed for any flight reservations or trips made by Victor  
08:46:10 8 Manuel Lopez and Francisco Javier Nunez.

08:46:13 9 Q. And was there another occasion in which you were alerted to  
08:46:16 10 a flight that Mr. Lopez was taking?

08:46:18 11 A. Yes. There was a flight June 24th of 2011 to Los Angeles.

08:46:24 12 Q. And did you or any other law enforcement take any action  
08:46:28 13 with respect to that flight?

08:46:29 14 A. No. That was -- that flight predated the one on which we  
08:46:32 15 encountered the females.

08:46:36 16 Q. And who else was on that flight through record locator?

08:46:40 17 A. The trip to Los Angeles?

08:46:42 18 Q. Yes.

08:46:42 19 A. Xuzel Delgado, who was also on the Continental flight to El  
08:46:47 20 Paso but did not fly that day. She was on that flight as well as  
08:46:53 21 I believe there was three other individuals whose names I don't  
08:46:58 22 recall at the time.

08:46:59 23 Q. Now, I want to turn your attention to a little bit later  
08:47:03 24 into February of last year.

08:47:05 25 A. Okay.

08:47:06 1 Q. All right. Were you alerted that Victor Manuel Lopez was  
08:47:13 2 purchasing a ticket?

08:47:14 3 A. I was on February 14th of 2012, I received a phone call as a  
08:47:22 4 result of a subpoena I had submitted to Continental Airlines and  
08:47:26 5 American Airlines to be notified if Victor Manuel Lopez bought  
08:47:30 6 any tickets or boarded any aircraft. I was called by American  
08:47:34 7 Airlines security office on the morning of February 14th and told  
08:47:39 8 that.

08:47:39 9 MS. WILLIAMS: Object to hearsay.

08:47:40 10 THE COURT: Sustained.

08:47:43 11 Q. (BY MR. GARDNER) Did you ask -- or did the subpoena ask for  
08:47:47 12 you to be alerted when Mr. Lopez took any flights?

08:47:50 13 A. Yes.

08:47:51 14 Q. And so, were you alerted on that occasion?

08:47:54 15 A. I was.

08:47:55 16 Q. All right. And based on that alert, what did you do?

08:47:59 17 A. I went to the Laredo Airport and observed through the  
08:48:04 18 security cameras Victor Lopez waiting for his flight, American  
08:48:13 19 Airlines. His itinerary was to Oklahoma City. I then contacted  
08:48:16 20 our duty agent in Oklahoma City, Homeland Security Investigations  
08:48:21 21 in Oklahoma City, the special agent was there Coburn and told him  
08:48:25 22 that we had a subject --

08:48:28 23 MS. WILLIAMS: Object to hearsay.

08:48:29 24 MR. GARDNER: He's testifying as to what he told the  
08:48:31 25 agent in Oklahoma City, your Honor.



08:48:33 1 MS. WILLIAMS: Still hearsay.

08:48:34 2 THE COURT: Outside the presence of the jury and not  
08:48:37 3 under oath, it is hearsay. I sustain the objection.

08:48:41 4 Q. (BY MR. GARDNER) Did you alert agents in Oklahoma?

08:48:43 5 A. I did.

08:48:44 6 Q. And what is the purpose for you alerting agents in Oklahoma?

08:48:48 7 A. I alerted the agents in Oklahoma so that they would conduct  
08:48:54 8 a surveillance of Victor Lopez while he was in Oklahoma.

08:48:58 9 Q. And why did you feel it was necessary to have agents in  
08:49:02 10 Oklahoma conduct a surveillance of Mr. Lopez?

08:49:05 11 A. To see who -- to see where he traveled, who he met, any  
08:49:10 12 vehicles he contacted or businesses he would have made contact  
08:49:14 13 with.

08:49:14 14 Q. And what was your suspicion that Victor Lopez was doing  
08:49:20 15 traveling to Oklahoma?

08:49:21 16 MS. WILLIAMS: Object to speculation.

08:49:24 17 MR. GARDNER: His thoughts, your Honor.

08:49:25 18 THE COURT: Pardon?

08:49:26 19 MR. GARDNER: It's his thoughts, your Honor, as the  
08:49:28 20 reason why he contacted the agents in Oklahoma City.

08:49:31 21 THE COURT: Well, he's answered that is what they do.  
08:49:36 22 But on the question was, why did he do it, I'll permit it. Or  
08:49:44 23 objection to the question asked is speculative.

08:49:48 24 Q. (BY MR. GARDNER) Why did you contact the agents to have them  
08:49:52 25 stop or track Mr. Lopez?

08:49:55 1 A. He was the subject of our investigation and want to see who  
08:49:59 2 he made contact with in Oklahoma City.

08:50:03 3 Q. Now, when you looked at that reservation and saw Mr. Lopez,  
08:50:08 4 how long was he going to stay, or what was the itinerary for that  
08:50:11 5 day?

08:50:12 6 A. For him to travel to Oklahoma City and immediately return to  
08:50:15 7 Laredo.

08:50:16 8 Q. Same day?

08:50:16 9 A. Correct.

08:50:17 10 Q. Were you aware of how he paid for that reservation?

08:50:20 11 A. I don't believe I was.

08:50:22 12 Q. Your Honor, may I have one moment?

08:50:24 13 THE COURT: Yes, sir.

08:50:30 14 MR. GARDNER: Your Honor, I'll pass the witness.

08:50:35 15 THE COURT: Ms. Williams.

08:50:40 16 MS. WILLIAMS: No questions.

08:50:43 17 MR. DEGEURIN: No questions, your Honor.

08:50:44 18 MR. WOMACK: No questions.

08:50:45 19 MR. ESPER: I just have a couple, your Honor.

08:50:52 20 CROSS-EXAMINATION

08:50:52 21 BY MR. ESPER:

08:50:53 22 Q. Mr. O'Dwyer, I believe you said one of the three females  
08:50:56 23 that was carrying \$9,900, was one of their names Vanessa Lopez?

08:51:01 24 A. Vanessa Lopez.

08:51:04 25 Q. What were the names you recall?

08:51:05 1 A. On the reservation, it said Xuzel Delgado, Veronica Duran  
08:51:10 2 and Ruth Garcia.

08:51:12 3 Q. Okay. Do you know -- and if you don't, simply say so --  
08:51:14 4 whether or not any of these three individuals were related by  
08:51:19 5 blood or marriage to Victor Lopez?

08:51:21 6 A. All of them claimed they were not.

08:51:23 7 Q. Okay. Did you conduct an examination of your own to  
08:51:28 8 determine whether or not they were related by blood or marriage  
08:51:31 9 to Victor Lopez?

08:51:32 10 A. I did not. The one who provided the wife's name of Victor  
08:51:37 11 Lopez and neither of them was anyone that went by that name.

08:51:42 12 Q. Okay. My question to you, again, did you conduct your own  
08:51:45 13 independent investigation to determine whether any of these three  
08:51:49 14 women were related by blood or marriage to Victor Lopez?

08:51:52 15 A. I did not.

08:51:52 16 Q. Other than talking to these three?

08:51:54 17 A. No, sir.

08:51:56 18 Q. That's all I have, your Honor.

08:52:00 19 MR. MAYR: I have no question, your Honor.

08:52:01 20 THE COURT: Any redirect?

08:52:02 21 MR. GARDNER: No, your Honor.

08:52:03 22 THE COURT: May this witness be excused?

08:52:05 23 MR. GARDNER: He may.

08:52:06 24 THE COURT: You may be excused.

08:52:07 25 THE WITNESS: Thank you.

08:52:09 1 THE COURT: Call your next witness.

08:52:11 2 MR. GARDNER: Thank you, your Honor. Your Honor, the  
08:52:12 3 government would call Special Agent Joshua Schenk.

08:52:46 4 (Witness sworn.)

08:52:50 5 THE COURT: If you'll tell us your full name and spell  
08:52:55 6 your last, please, sir.

08:52:56 7 THE WITNESS: Joshua Paul Schenk. Last name is  
08:52:59 8 spelled, S-C-H-E-N-K.

08:53:01 9 THE COURT: Go ahead.

08:53:03 10 JOSHUA P. SCHENK, called by the Government, duly sworn.

08:53:03 11 DIRECT EXAMINATION

08:53:03 12 BY MR. GARDNER:

08:53:04 13 Q. Thank you, your Honor.

08:53:04 14 Special Agent Schenk, you and I have met before. Could  
08:53:07 15 you introduce yourself to the jury and tell them what you do for  
08:53:09 16 a living and where?

08:53:10 17 A. Again, my name is Joshua Paul Schenk. I'm a supervisor  
08:53:14 18 special agent with the Department of Homeland Security, Homeland  
08:53:17 19 Security Investigations in Oklahoma City.

08:53:21 20 Q. Sir, I want to turn your attention to February 14th of 2012.  
08:53:25 21 Were you on duty that day?

08:53:26 22 A. That's correct, sir. Yes.

08:53:28 23 Q. And did you receive a call from Special Agent Ed O'Dwyer in  
08:53:34 24 Laredo?

08:53:34 25 A. I did.

08:53:35 1 Q. Without getting too much into what Special Agent O'Dwyer  
08:53:38 2 told you, what were your actions that day? Or based on that  
08:53:41 3 conversation, what were your actions?

08:53:43 4 A. We established surveillance at the Oklahoma City -- Will  
08:53:50 5 Rogers Oklahoma City Airport. We were looking for a -- what  
08:53:56 6 Agent O'Dwyer had -- what he believed he identified a bulk-cash  
08:54:02 7 smuggler. He had given us a description of that individual, and  
08:54:07 8 we established surveillance in the airport waiting for him to  
08:54:10 9 arrive at the Oklahoma City Airport.

08:54:13 10 Q. And when you say you were given a description, was that  
08:54:16 11 general description of his physical makeup?

08:54:18 12 A. Physical makeup and the item, the clothing that he was  
08:54:22 13 wearing that day.

08:54:23 14 Q. And at some point, did you see an individual matching that  
08:54:26 15 description exit an airplane?

08:54:28 16 A. We did.

08:54:30 17 Q. And was that airplane arrived -- or did it arrive from  
08:54:34 18 Laredo, Texas?

08:54:34 19 A. Yes, it did.

08:54:35 20 Q. May I have 335? And do you recognize this individual, sir?

08:54:53 21 A. Yes, sir.

08:54:53 22 Q. And was that the individual who got off the plane that day?

08:54:56 23 A. It was.

08:54:57 24 Q. Sir, after Mr. Lopez got off the plane, what actions did you  
08:55:03 25 or other agents take?

08:55:05 1 A. We followed Mr. Lopez from the terminal area after he got  
08:55:08 2 off the plane. Mr. Lopez -- we followed him through the  
08:55:14 3 underground tunnel area up towards the parking area at which time  
08:55:21 4 he met up with two other individuals, and they proceeded to go up  
08:55:25 5 to the parking deck.

08:55:27 6 Q. Now, these other two individuals, were you able to identify  
08:55:30 7 them at the time they met with Mr. Lopez?

08:55:33 8 A. We identified them later. Yes.

08:55:35 9 Q. And based on that later identification, who did Mr. Lopez  
08:55:40 10 meet with?

08:55:41 11 A. He met with the defendant, Mr. Trevino-Morales, and with  
08:55:46 12 another individual -- I don't recall his name.

08:55:50 13 Q. And does Fidencio Jimenez help to refresh your memory?

08:55:53 14 A. That's correct. Yes, sir.

08:55:54 15 Q. So based on that surveillance, did you follow him out into  
08:55:57 16 the parking lot?

08:55:58 17 A. Yes, I did.

08:55:58 18 Q. And what did you observe these three individuals doing?

08:56:02 19 A. We observed Mr. Lopez and Mr. Trevino. They proceeded into  
08:56:09 20 a pickup truck that was parked in the parking garage. Mr.  
08:56:16 21 Fidencio stayed in the -- there's a glass enclosure at the top of  
08:56:21 22 the parking garage while the other two individuals were in that  
08:56:24 23 pickup truck. They remained in that pickup truck for  
08:56:28 24 approximately four minutes, at which point Victor Lopez exited  
08:56:32 25 the vehicle towards -- and walked back towards the glass

08:56:38 1 enclosure where Fidencio was.

08:56:41 2 They acknowledged each other, Fidencio proceeded back  
08:56:45 3 to the pickup, and Mr. Lopez proceeded back to the terminal.

08:56:49 4 THE COURT: We have three Trevinos listed in the  
08:56:53 5 indictment. You just said defendant. Do you know which Trevino?

08:56:58 6 THE WITNESS: Yes, sir. It was a Juan Trevino.

08:57:04 7 Q. (BY MR. GARDNER) Juan or Jose?

08:57:05 8 A. I'm sorry. Jose. Jose.

08:57:08 9 Q. And when you observed Mr. Lopez go back into the terminal,  
08:57:14 10 what did he do?

08:57:16 11 A. Mr. Lopez proceeded back through security and basically  
08:57:22 12 waited for his flight back to Laredo.

08:57:26 13 Q. And following Mr. Lopez's departure, what happened to Mr.  
08:57:31 14 Jose Trevino and Fidencio Jimenez?

08:57:34 15 A. Mr. Trevino and Mr. Jimenez proceeded to exit the airport at  
08:57:40 16 which time we followed them out of the airport area.

08:57:44 17 Q. And what happened based on that surveillance of Mr. Trevino?

08:57:49 18 A. Mr. Trevino was -- a vehicle stop was initiated on Mr.

08:57:54 19 Trevino by the Oklahoma City Police Department at near, I  
08:57:58 20 believe, Walker and 240, I-240 there in Oklahoma City. He gave  
08:58:06 21 consent to search his vehicle, at which time we proceeded to  
08:58:10 22 search his vehicle.

08:58:11 23 Q. Are you familiar with a task force officer named Matt  
08:58:15 24 Martin?

08:58:15 25 A. I am, sir.

08:58:16 1 MS. WILLIAMS: I'm sorry?

08:58:17 2 MR. GARDNER: Matt Martin.

08:58:19 3 MS. WILLIAMS: Thank you.

08:58:20 4 Q. (BY MR. GARDNER) And he's here to testify, too?

08:58:22 5 A. Yes, he is.

08:58:23 6 Q. Did he conduct an interview of Mr. Trevino?

08:58:25 7 A. Yes, he did.

08:58:25 8 Q. I want to turn your attention back to the airport. I'm

08:58:28 9 showing you Government's Exhibit 365. Are those your initials,

08:58:32 10 sir, on that disc?

08:58:33 11 A. Yes, they are.

08:58:33 12 Q. All right. What is this a disc of?

08:58:35 13 A. That's a surveillance footage from the airport itself.

08:58:39 14 Q. Okay. And when you say from the airport, is that the

08:58:42 15 airport security cameras?

08:58:43 16 A. Yes, it is.

08:58:44 17 Q. Did the airport security cameras capture the meeting of

08:58:48 18 Victor Lopez and the Defendant Jose Trevino?

08:58:51 19 A. Yes, they did.

08:58:52 20 Q. And where was the view of this meeting captured?

08:58:55 21 A. That was on the top parking deck at the airport.

08:59:00 22 Q. And based on your review of this video and your initials of

08:59:03 23 the disc, is it a true and accurate representation of the events

08:59:06 24 that happened that day?

08:59:07 25 A. It is.



08:59:08 1 Q. Your Honor, I would offer Government's Exhibit 365.

08:59:18 2 MR. DEGEURIN: No objection.

08:59:18 3 THE COURT: 365 is admitted.

08:59:20 4 MR. GARDNER: Your Honor, may I publish it to the jury?

08:59:22 5 THE COURT: You may.

08:59:23 6 Q. (BY MR. GARDNER) All right. Special Agent Schenk, if you  
09:00:09 7 will, could you set the scene for us here? Could you stop it,  
09:00:14 8 please?

09:00:14 9 (Video file played.)

09:00:14 10 A. You will see Mr. Lopez and Mr. Trevino-Morales coming from  
09:00:19 11 the bottom right-hand of the screen. That would be coming from  
09:00:23 12 the direction of the glass enclosure, located at the top of the  
09:00:29 13 parking deck, and proceed to the pickup. It's a -- like a  
09:00:33 14 light-blue-colored Chevy Silverado crew cab pickup that's parked  
09:00:37 15 in between the other two white vehicles there.

09:00:41 16 Q. And give me one second here. And when you say the pickup  
09:00:48 17 here, is this the pickup you're talking about?

09:00:50 18 A. That's correct, sir.

09:00:51 19 Q. And with respect to the amount of time you testified  
09:00:55 20 earlier, what's this down here at the bottom left-hand corner?

09:00:58 21 A. That is the timestamp for the surveillance photo.

09:01:01 22 Q. All right. So the date, 2-14-2012, right now looking at  
09:01:06 23 1:29 p.m., correct?

09:01:06 24 A. Yes, sir.

09:01:07 25 Q. Could you go ahead and play it, please?

09:01:22 1 (Video file played.)

09:02:03 2 Q. Could you stop it, please? Who are these two individuals?

09:02:10 3 A. Individual on the left-hand side is Jose Trevino-Morales.

09:02:15 4 Individual on the right-hand side is Victor Lopez.

09:02:18 5 Q. This one on the left is Jose Trevino, correct?

09:02:23 6 A. That's correct, sir.

09:02:24 7 Q. Now, have you reviewed this entire video? I'm just playing

09:02:26 8 a portion. Did you review this entire video?

09:02:28 9 A. Yes, sir.

09:02:28 10 Q. And did Mr. Jose Trevino exit from that truck to go into the

09:02:33 11 truck earlier on this video?

09:02:34 12 A. Yes, sir. He did.

09:02:35 13 Q. And so, on the left, again, is Defendant Jose Trevino and on

09:02:39 14 the right is Victor Lopez?

09:02:40 15 A. That's correct, sir.

09:02:42 16 Q. Please play.

09:02:43 17 (Video file played.)

09:03:03 18 Q. And you didn't have any recording devices or cameras inside

09:03:07 19 the pickup truck between the departure and the arrival of Mr.

09:03:12 20 Lopez, did you?

09:03:12 21 A. No. We did not.

09:03:13 22 Q. So you have no idea what conversation occurred in that cab?

09:03:16 23 A. No, sir.

09:03:17 24 Q. Could you please forward it -- is there anything in that

09:03:23 25 intervening four minutes that happened of significance?

09:03:25 1 A. No, sir.

09:03:28 2 (Video file played.)

09:03:59 3 Q. And again, Special Agent Schenk, is that Victor Lopez  
09:04:03 4 departing the pickup truck?

09:04:04 5 A. That is.

09:04:05 6 Q. So what happened with Mr. Lopez and where is he heading at  
09:04:11 7 that camera view?

09:04:13 8 A. Mr. Lopez was walking towards the glass enclosure area,  
09:04:16 9 again, that would lead you back down towards the tunnel that went  
09:04:20 10 into the airport terminals. He met up -- at that point, he met  
09:04:25 11 up with Fidencio in the glass enclosure area. Like I said, they  
09:04:32 12 greeted each other and he proceeded back into the airport,  
09:04:36 13 towards the terminal.

09:04:38 14 Q. In a minute, are we going to see Fidencio Jimenez returning  
09:04:42 15 to the truck?

09:04:42 16 A. Yes, sir.

09:04:43 17 Q. Who is that, sir?

09:04:43 18 A. That is Fidencio there.

09:04:45 19 Q. After they get in the truck, do they leave immediately?

09:04:47 20 A. Yes, sir.

09:04:48 21 Q. Now, Special Agent, in your training and experience, have  
09:04:56 22 you seen this type of activity before?

09:04:58 23 A. Yes, sir.

09:04:59 24 Q. And what is that consistent with?

09:05:01 25 MS. WILLIAMS: Excuse me, your Honor. What activity or

09:05:05 1 specific activity are we talking about?

09:05:07 2 MR. GARDNER: I'll lay a better foundation, your Honor.

09:05:09 3 I thought the video explained it, but I'll ask a question.

09:05:13 4 THE COURT: Let's just ask questions.

09:05:14 5 Q. (BY MR. GARDNER) Have you seen individuals arrive on a  
09:05:21 6 roundtrip ticket, the same day, using cash, meeting for a short  
09:05:26 7 period of time and then, departing the same location shortly  
09:05:30 8 thereafter?

09:05:30 9 A. Well, and, actually, this is the first time I'd ever seen  
09:05:33 10 anything like that. Yes, sir.

09:05:36 11 Q. Your Honor, I'll pass the witness.

09:05:39 12 CROSS-EXAMINATION

09:05:41 13 BY MS. WILLIAMS:

09:05:41 14 Q. Special Agent Schenk.

09:05:47 15 A. Yes, ma'am.

09:05:48 16 Q. Am I pronouncing your name right?

09:05:49 17 A. Yeah. Schenk.

09:05:51 18 Q. On this video that we're looking at, what is -- I'm facing  
09:05:57 19 the screen. What's right there to the left? What's that  
09:06:02 20 structure?

09:06:02 21 A. To the left of what?

09:06:04 22 Q. Well, to the left of the -- if we're looking at the picture,  
09:06:07 23 what's to my left? What is that structure?

09:06:09 24 A. That is still a parking garage.

09:06:11 25 Q. A public parking garage?

09:06:12 1 A. That's correct.

09:06:13 2 Q. So Mr. Trevino could have chosen to park in the covered  
09:06:16 3 parking garage, correct?

09:06:17 4 A. Yes.

09:06:18 5 Q. But he didn't?

09:06:19 6 A. No.

09:06:22 7 Q. So as I understand your testimony, after Mr. Trevino left  
09:06:29 8 this parking lot -- not the garage but the lot, you gave some  
09:06:37 9 instructions to Oklahoma City Police Department to make a traffic  
09:06:43 10 stop?

09:06:43 11 A. To follow the vehicle and to attempt to stop it, if  
09:06:49 12 possible.

09:06:49 13 Q. What does that mean?

09:06:51 14 A. In other words, to follow the vehicle, we asked them to  
09:06:55 15 follow the vehicle in order to identify the occupants and that if  
09:06:58 16 there was a traffic violation to have had occurred in their  
09:07:02 17 presence, to go ahead and stop the vehicle.

09:07:03 18 Q. And so, in law enforcement terms, that means make up a  
09:07:07 19 traffic violation and stop the vehicle?

09:07:09 20 MR. GARDNER: Your Honor, that's argumentative.

09:07:11 21 THE COURT: Very. Sustained.

09:07:14 22 Q. (BY MS. WILLIAMS) Is that what's called a pretext stop?

09:07:17 23 MR. GARDNER: Your Honor, argumentative.

09:07:20 24 THE COURT: He can answer that question.

09:07:24 25 A. No. No. I've never -- I've never heard it referred to it a

09:07:29 1 as a pretext stop.

09:07:31 2 Q. (BY MS. WILLIAMS) You've never heard -- Oklahoma City Police  
09:07:38 3 Department isn't really stopping Mr. Trevino because he made a  
09:07:41 4 traffic violation. They're stopping him because they know that  
09:07:44 5 you want to try to -- you want them to try to talk to him?

09:07:48 6 MR. GARDNER: Your Honor, right now, it's argumentative  
09:07:50 7 and she's testifying.

09:07:51 8 THE COURT: I think -- it's cross-examination.

09:07:56 9 MR. GARDNER: I understand.

09:07:57 10 THE COURT: But to the question asked, I sustain the  
09:07:59 11 objection.

09:08:00 12 Q. (BY MS. WILLIAMS) What was the reason for the stop, do you  
09:08:02 13 know?

09:08:02 14 A. It was crossing right of center.

09:08:05 15 Q. What does that mean?

09:08:06 16 A. It means that that vehicle basically in layman's term -- I'm  
09:08:12 17 not a traffic officer either.

09:08:15 18 Q. I understand that.

09:08:15 19 A. From what I understand, that means that vehicle crossed the  
09:08:19 20 -- basically crossed into another lane of traffic without  
09:08:21 21 signaling.

09:08:23 22 Q. Well, does it -- is there a difference in your mind between  
09:08:31 23 cross right of center and changing lanes without a signal? Are  
09:08:37 24 those two different things?

09:08:38 25 A. I don't know. I'm not -- I've never worked traffic.

09:08:40 1 Q. Fair enough.

09:08:50 2 Were you a part of the traffic stop?

09:08:55 3 A. I was not there initially. I arrived after the stop had

09:08:59 4 already been made.

09:08:59 5 Q. All right. And did you talk to Mr. Trevino?

09:09:02 6 A. I never personally spoke to Mr. Trevino.

09:09:05 7 Q. Did Mr. Trevino give consent to search his car?

09:09:09 8 A. Yes, he did.

09:09:10 9 Q. Did -- was he then placed in the back of a patrol car?

09:09:16 10 A. Yes, he was.

09:09:17 11 Q. And his passenger placed in the back of another patrol car?

09:09:20 12 A. Yes.

09:09:20 13 Q. And did he complain about that at all?

09:09:23 14 A. No. Not that I recall.

09:09:24 15 Q. Did you put handcuffs on him?

09:09:33 16 A. I don't recall if he was handcuffed.

09:09:36 17 Q. But once he got in the back of that patrol car, he couldn't

09:09:46 18 get out, could he?

09:09:47 19 A. At some point, the car door was opened. I don't --

09:09:53 20 Q. Let me stop. My question was, once Mr. Trevino was placed

09:09:56 21 in the back of the patrol car, he couldn't get out, could he? He

09:10:00 22 couldn't physically open the door, could he?

09:10:02 23 A. No. He would not be able to.

09:10:04 24 Q. Until somebody came and let him out?

09:10:05 25 A. That's correct.

09:10:06 1 Q. After they finished talking to him?

09:10:08 2 A. No. He wouldn't start talking to him until he opened the

09:10:13 3 door.

09:10:13 4 Q. Doesn't let him get out after they finished talking to him?

09:10:16 5 A. No. They --

09:10:18 6 Q. Was the interview conducted in the car or out of the car?

09:10:21 7 A. Outside the car. He was still in the car, however, the

09:10:23 8 officers were outside the car.

09:10:24 9 Q. And do we have video of that interview?

09:10:27 10 A. No. We don't.

09:10:33 11 Q. So you set up surveillance at the airport, but when you

09:10:38 12 actually go to talk to Mr. Trevino and ask him why he was there

09:10:43 13 and what was happening and asked for his explanation, you don't

09:10:48 14 have that on video?

09:10:49 15 A. The surveillance at the airport was the actual airport

09:10:52 16 surveillance cameras. We used those cameras. We don't have

09:10:56 17 surveillance cameras on Walker and 240.

09:11:00 18 Q. Oklahoma City Police Department doesn't have cameras in

09:11:04 19 their car?

09:11:04 20 A. I'm not sure if they do or not.

09:11:07 21 Q. You could have asked for that, though, couldn't you?

09:11:10 22 A. It's not -- that's not something that we customarily ask

09:11:13 23 for.

09:11:14 24 THE COURT: Question is, could you have asked for?

09:11:17 25 THE WITNESS: We could have asked. Yes, sir.



09:11:19 1 MS. WILLIAMS: Nothing further. Thank you.

09:11:25 2 MR. GARDNER: I'm sorry. I did jump the gun. I  
09:11:27 3 apologize.

09:11:28 4 MR. WOMACK: No questions.

09:11:29 5 MR. MAYR: No.

09:11:30 6 THE COURT: Go ahead.

09:11:32 7 RE-DIRECT EXAMINATION

09:11:32 8 BY MR. GARDNER:

09:11:33 9 Q. Are there surveillance cameras all over this airport to  
09:11:36 10 include all structured parking?

09:11:38 11 A. Yes. Just about every square foot of the parking's covered.

09:11:43 12 Q. And it wasn't until later. I guess wasn't until the traffic  
09:11:47 13 stop when you first learned of Mr. Jose Trevino?

09:11:50 14 A. That's correct, sir.

09:11:51 15 Q. Pass the witness, your Honor.

09:11:54 16 THE COURT: May the witness be excused, counsel?

09:11:57 17 MS. WILLIAMS: Yes, your Honor.

09:11:58 18 THE COURT: You may be excused, sir. You may call your  
09:11:59 19 next witness.

09:12:00 20 MR. GARDNER: Thank you, your Honor. The government  
09:12:02 21 calls Matt Martin.

09:12:26 22 (Witness sworn.)

09:12:41 23 THE COURT: Good morning. Tell us, please, sir, your  
09:12:48 24 full name and spell your last.

09:12:49 25 THE WITNESS: It's Matthew Scott Martin, M-A-R-T-I-N.

09:12:55 1 MR. GARDNER: Thank you, your Honor.

09:12:56 2 MATTHEW S. MARTIN, called by the Government, duly sworn.

09:12:56 3 DIRECT EXAMINATION

09:12:56 4 BY MR. GARDNER:

09:12:57 5 Q. Officer Martin, if you will, could you please introduce  
09:12:59 6 yourself to the jury and tell them what you do for a living?

09:13:01 7 A. My name is Matthew Martin. I'm a detective for the Oklahoma  
09:13:05 8 City Police Department. I'm assigned to special projects in the  
09:13:08 9 major violators unit. I'm on a federal task force at Homeland  
09:13:12 10 Security Investigations.

09:13:14 11 Q. Don't take this the wrong way, but you don't look like a  
09:13:17 12 cop. You've got a very robust beard working there.

09:13:22 13 A. Yes, sir. Working undercover capacity.

09:13:24 14 Q. That's for your undercover appearance, correct?

09:13:27 15 A. Yes, sir.

09:13:27 16 Q. All right. And, sir, were you on duty on February 14th of  
09:13:30 17 2012?

09:13:31 18 A. Yes, sir. I was.

09:13:32 19 Q. And what were you doing that day?

09:13:34 20 A. I had received a call from Special Agent Eric Coburn, who  
09:13:40 21 was at the airport, the Will Rogers Airport in Oklahoma City, and  
09:13:45 22 asked me if I could assist him.

09:13:46 23 MS. WILLIAMS: Object to hearsay.

09:13:48 24 THE COURT: Sustained.

09:13:49 25 Q. (BY MR. GARDNER) I understand what you were told. So based

09:13:52 1 on what you were told, what actions did you conduct?

09:13:56 2 A. I proceeded to Will Rogers World Airport area. I set up in  
09:14:00 3 a motel just north of the airport on Meridian Avenue and waited  
09:14:05 4 for instructions from Special Agent Coburn.

09:14:08 5 Q. And based on your activities that day, were you instructed  
09:14:14 6 to proceed to where a traffic stop could be made?

09:14:17 7 A. Yes, sir. There was a vehicle that left the airport. It  
09:14:20 8 was a 2009 Chevy pickup, light-blue in color, and I followed the  
09:14:28 9 vehicle until I could get a black-and-white to stop the car in  
09:14:32 10 traffic.

09:14:33 11 Q. Did you have any idea who was the occupants of that vehicle  
09:14:35 12 at that time?

09:14:35 13 A. Yes, sir. The driver --

09:14:37 14 Q. Let me interrupt you for a second. At that time, did you?

09:14:40 15 A. Oh, no, sir. I did not.

09:14:41 16 Q. Was it later you identified them?

09:14:43 17 A. Yes, sir.

09:14:44 18 Q. All right. And were you able to obtain what you termed a  
09:14:47 19 black-and-white marked patrol unit?

09:14:50 20 A. Yes, sir.

09:14:50 21 Q. And did that patrol unit conduct a traffic stop?

09:14:53 22 A. Yes, sir. Sergeant Warren McMullen from Oklahoma City  
09:14:56 23 Police Department was able to obtain charges to make a traffic  
09:14:59 24 stop and stop the vehicle.

09:15:00 25 Q. And how long after the traffic stop did you arrive on the

09:15:03 1 scene?

09:15:04 2 A. I was from -- I was behind the black-and-white when he  
09:15:07 3 stopped the pickup truck.

09:15:08 4 Q. And when you made -- or when Officer McMullen approached  
09:15:13 5 him, how soon did you make contact with the occupants?

09:15:16 6 A. Approximately five minutes to ten minutes later.

09:15:18 7 Q. And were you able to identify the driver of that vehicle?

09:15:20 8 A. Yes, sir. I was.

09:15:22 9 Q. And who was it at that time, sir?

09:15:25 10 A. Jose Morales-Trevino.

09:15:27 11 Q. And the passenger, were you able to identify the passenger?

09:15:31 12 A. I was. I'm going to have trouble with his name, I'm sorry,  
09:15:36 13 sir. It's --

09:15:38 14 MR. WOMACK: Objection. It appears the witness is  
09:15:39 15 looking at something.

09:15:41 16 Q. (BY MR. GARDNER) Are those your notes?

09:15:42 17 A. It's the police report. Yes, sir.

09:15:44 18 Q. Your police report from that?

09:15:45 19 A. Yes, sir.

09:15:45 20 Q. Okay. Does it help refresh your memory today?

09:15:48 21 A. It does.

09:15:50 22 MR. WOMACK: Your Honor, perhaps it would be better for  
09:15:52 23 the government to lay a foundation if he doesn't have a memory  
09:15:54 24 and then, look at it, rather than have him reading from his notes  
09:15:59 25 on the stand. Normally that would be how we would do it to

09:16:01 1 refresh recollection.

09:16:03 2 MR. GARDNER: Mr. Womack wants me to go through that  
09:16:05 3 long --

09:16:06 4 THE COURT: Now --

09:16:07 5 MR. GARDNER: -- I'll do it, your Honor.

09:16:08 6 THE COURT: -- now, now.

09:16:09 7 MR. GARDNER: I believe he can use his notes.

09:16:11 8 THE COURT: I have no objection.

09:16:14 9 MR. WOMACK: That's correct, sir. I have no objection.  
09:16:16 10 I just didn't know what it was he was reading.

09:16:18 11 THE COURT: Ask the question.

09:16:19 12 Q. (BY MR. GARDNER) Was that report made at the time of the  
09:16:21 13 incident?

09:16:22 14 A. Yes, sir. That day.

09:16:23 15 Q. All right. And it's been over a year since that time,  
09:16:27 16 correct?

09:16:27 17 A. Yes, sir. About 14 months.

09:16:29 18 Q. I'm going to show you what's been marked as Government's  
09:16:35 19 Exhibit 365A, 365B and 365C. Do you recognize those pictures,  
09:16:43 20 sir?

09:16:43 21 A. Yes, sir. I do.

09:16:44 22 Q. And are those pictures taken on the day, February 14th of  
09:16:49 23 2012?

09:16:50 24 A. Yes, sir. They were taken by Agent Coburn.

09:16:52 25 Q. And are they a fair and accurate representation of the

09:16:55 1 events that happened that day?

09:16:56 2 A. Yes, sir. They're exactly what happened that day.

09:17:03 3 Q. Your Honor, I'd offer Government's Exhibit 365A, 365B, 365C.

09:17:14 4 MS. WILLIAMS: No objection.

09:17:18 5 THE COURT: All right. 365A, B and C are admitted.

09:17:31 6 Q. (BY MR. GARDNER) Is this the driver's license that was

09:17:33 7 provided that day from the driver?

09:17:34 8 A. Yes, sir. It is.

09:17:36 9 Q. Mr. Jose Trevino-Morales, correct?

09:17:38 10 A. Yes, sir.

09:17:38 11 Q. And 365B, was that the heavy truck that you just testified

09:17:47 12 to?

09:17:49 13 A. Yes, sir.

09:17:49 14 Q. And the purpose of taking it from this angle is to, in fact,

09:17:54 15 capture the license plate for identification?

09:17:56 16 A. Yes, sir.

09:17:56 17 Q. Now, did you request to Mr. Trevino to search that car?

09:18:02 18 A. No, sir. Not at that time, I did not.

09:18:05 19 Q. Was it eventually somebody's request to do a consent search

09:18:08 20 of his truck?

09:18:09 21 A. Yes, sir. The patrol officers that were there on the scene,

09:18:12 22 Sergeant McMullen received permission to search the vehicle.

09:18:15 23 Q. All right. And did you or other officers present search the

09:18:18 24 vehicle?

09:18:19 25 A. Yes, sir, they did.

09:18:20 1 Q. And was any contraband found?

09:18:21 2 A. No, sir.

09:18:22 3 Q. Was there any hidden compartments located in the truck

09:18:25 4 anywhere?

09:18:26 5 A. No, sir. None were located.

09:18:28 6 Q. And was Mr. Trevino cooperative during the whole time?

09:18:32 7 A. Somewhat.

09:18:33 8 Q. When you say somewhat, did he ever ask you the reason for

09:18:36 9 the traffic stop?

09:18:37 10 A. No, sir. He didn't ask me.

09:18:39 11 Q. And did you talk to Mr. Trevino?

09:18:41 12 A. Yes, sir, I did. Later.

09:18:43 13 Q. And after talking to him -- or before talking to him, was a

09:18:48 14 amount of currency found on his person?

09:18:50 15 A. Yes, sir. Sergeant McMullen told me that he had found

09:18:53 16 \$5,000 in cash on Mr. Trevino.

09:18:56 17 Q. And were you able to verify the \$5,000 cash?

09:18:59 18 A. Yes, I was.

09:19:00 19 Q. I'm showing you Government's Exhibit 365C. Who is that a

09:19:05 20 picture of?

09:19:06 21 A. That's Mr. Trevino.

09:19:07 22 Q. All right. What is he holding in his hand right here?

09:19:10 23 A. \$5,000 in cash.

09:19:14 24 Q. Now, when you talked to Mr. Trevino, what kind of questions

09:19:17 25 did you ask him?

09:19:18 1 A. I just asked him where he'd been, where he was coming from,  
09:19:21 2 what he did for a living.

09:19:23 3 Q. With respect to the questions where he'd been, at that  
09:19:27 4 point, did you know he had come from the airport?

09:19:28 5 A. Yes, sir, I did.

09:19:29 6 Q. All right. So when you asked him, where have you been, what  
09:19:33 7 was his response?

09:19:35 8 A. He told me that he was coming from Remington Park that he  
09:19:38 9 had been at the horse track.

09:19:40 10 Q. And was that not true according to what you'd seen that day?

09:19:43 11 A. Yes, sir. That was not true.

09:19:45 12 Q. Did you see him at any time between leaving the airport and  
09:19:48 13 being stopped to go to Remington Park?

09:19:50 14 A. No, sir. It's about 15 miles on the other side of the city.

09:19:55 15 Q. Remington Park, is that a horse race track?

09:19:57 16 A. Yes, sir, it is.

09:19:58 17 Q. All right. And did you confront Mr. Trevino with the fact  
09:20:01 18 that he just lied to you about coming from the airport?

09:20:03 19 A. Yes, I did.

09:20:04 20 MS. WILLIAMS: Objection. That assumes facts not in  
09:20:06 21 evidence.

09:20:10 22 THE COURT: Rephrase your question.

09:20:11 23 Q. (BY MR. GARDNER) Did you confront Mr. Trevino with the fact  
09:20:15 24 that you knew he had just come from the airport?

09:20:18 25 A. Yes, sir, I did.



09:20:19 1 Q. And what was his response to that?

09:20:21 2 A. He had no response.

09:20:23 3 Q. Did he mention that he was meeting someone at the airport?

09:20:28 4 A. He told me that he had been to the airport earlier that day

09:20:31 5 to pick up the guy that was with him, Mr. Jimenez.

09:20:38 6 Q. I'm going to ask you to refer to your notes.

09:20:40 7 A. Yes, sir.

09:20:40 8 Q. Do you recall a statement that Mr. Trevino made after the --

09:20:45 9 let me back up. Let me just go over some stuff.

09:20:48 10 A. Yes, sir.

09:20:48 11 Q. So he made the statement that he's never been to the

09:20:50 12 airport?

09:20:50 13 A. That he wasn't coming from the airport.

09:20:54 14 Q. And do you recall him making another statement after that

09:20:57 15 that he was going to meet -- he was at the airport and he was

09:21:00 16 going to meet a friend?

09:21:02 17 A. What he originally told me was that he had been at the

09:21:05 18 airport earlier, earlier in the day, that morning, had picked up

09:21:11 19 Mr. Jimenez, who is a horse trainer, according to Mr. Trevino,

09:21:16 20 taking him to Remington Park. They had just come from Remington

09:21:19 21 Park and were headed back to the horse ranch.

09:21:24 22 Q. And was Mr. Trevino ever placed in handcuffs?

09:21:27 23 A. No, sir. Not once.

09:21:30 24 Q. May I have one moment, your Honor?

09:21:31 25 THE COURT: Yes.

09:21:41 1 Q. (BY MR. GARDNER) Are you familiar with the term "canine  
09:21:44 2 dog"?

09:21:44 3 A. Yes, sir, I am.

09:21:45 4 Q. And what is a canine dog?

09:21:47 5 A. It is a police dog.

09:21:49 6 Q. And what are the police dogs generally trained to do?

09:21:54 7 A. As far as I know, sir, they're one of three things. They're  
09:21:57 8 a bomb-sniffing dog, a drug-sniffing dog, or an attack dog for  
09:22:02 9 -- better word of it, I mean, it's -- that's not what they call  
09:22:05 10 it, but that's what it is.

09:22:06 11 Q. And was a canine dog out there that day?

09:22:08 12 A. Yes, sir. From our interdiction unit brought a dog over.

09:22:13 13 Q. And was that dog, what they call, run around Mr. Trevino's  
09:22:16 14 truck?

09:22:17 15 A. Yes, sir. It was.

09:22:18 16 Q. Do you know if that dog conducted an alert on that truck?

09:22:21 17 A. It alerted on several locations on the vehicle. Yes, sir.

09:22:23 18 Q. But, again, were you able to locate any narcotics?

09:22:26 19 A. No, sir. I was not.

09:22:27 20 Q. All right. I'll pass the witness.

09:22:32 21 CROSS-EXAMINATION

09:22:32 22 BY MS. WILLIAMS:

09:22:45 23 Q. Detective Martin.

09:22:46 24 A. Yes, ma'am.

09:22:47 25 Q. Did I hear you correctly say that Remington Park is 50 miles

09:22:51 1 from the airport?

09:22:51 2 A. I'm sorry, ma'am, 15, 1-5.

09:22:54 3 Q. Thank you. My hearing.

09:22:55 4 A. I'm sorry. I've kind of got a cold or something.

09:23:00 5 Q. So Mr. Trevino told you that he had picked up this man who

09:23:08 6 was with him who was a trainer and taking him out to Remington

09:23:11 7 Park?

09:23:11 8 A. Yes.

09:23:12 9 Q. And do you remember him telling you that he was wanting that

09:23:18 10 trainer to get his trainer's license? Did you have a

09:23:20 11 conversation about that?

09:23:21 12 A. Yes. I had a conversation with Mr. Jimenez and Mr. Trevino

09:23:25 13 both about the trainer license.

09:23:26 14 Q. And they both told the same story about that, did they not?

09:23:30 15 A. On that part, yes, ma'am.

09:23:35 16 Q. Do you remember specifically what your question was? Was

09:23:39 17 it, where are you coming from, or what is your business in

09:23:41 18 Oklahoma City?

09:23:42 19 A. Where are you coming from.

09:23:44 20 Q. All right. Do you know what the term "pretext stop" means?

09:23:50 21 A. No, ma'am.

09:23:51 22 Q. You've never heard that term?

09:23:52 23 A. No, ma'am.

09:23:59 24 Q. You work in narcotics?

09:24:01 25 A. Yes, ma'am.

09:24:02 1 Q. When you want a traffic officer to stop somebody for you, do  
09:24:08 2 you have a term for that?

09:24:11 3 A. I'm not sure what you mean, ma'am.

09:24:13 4 Q. I mean, every day in your job.

09:24:15 5 A. Yes.

09:24:16 6 Q. You want to stop somebody and you don't want to do it  
09:24:19 7 yourself because you're not in a marked car; is that correct?

09:24:21 8 A. Yes, ma'am.

09:24:21 9 Q. And so, it's an everyday part of your job to have a marked  
09:24:26 10 patrol car stop a car for you.

09:24:28 11 A. No, ma'am. Not every day, no.

09:24:33 12 Q. Every week?

09:24:37 13 A. Not really, ma'am. I mean.

09:24:39 14 Q. Once a month?

09:24:41 15 A. Maybe once every two or three months maybe.

09:24:46 16 Q. And so, on this occasion, you called a marked patrol car and  
09:24:51 17 you said, we want to talk to this guy.

09:24:54 18 A. I asked him if he could try to stop the car. Yes, ma'am.

09:24:58 19 Q. Is that where -- were those your words?

09:25:02 20 A. I'm sure. I mean, something to that effect.

09:25:06 21 Q. Can I see this?

09:25:07 22 A. Sure.

09:25:19 23 Q. I haven't seen this, before, your Honor. Could I have a  
09:25:23 24 second?

09:25:23 25 THE COURT: Take your time.

09:25:27 1 MS. WILLIAMS: Thank you, your Honor, I apologize.

09:26:28 2 Give that back to you in case you need to refresh your

09:26:31 3 recollection.

09:26:32 4 Q. (BY MS. WILLIAMS) What was Mr. Trevino stopped for?

09:26:42 5 A. Failure to keep right of center is I think what the ticket

09:26:45 6 said.

09:26:45 7 Q. What did that mean?

09:26:46 8 A. You have lines on the road and you have to stay within them.

09:26:57 9 Q. Here in Texas, we have a offense called failure to maintain

09:27:01 10 a single lane of traffic. Is that?

09:27:04 11 A. No, ma'am. We have city ordinances is what we write tickets

09:27:07 12 on. That's a city ordinance that he pled guilty to.

09:27:10 13 Q. Failure to keep front of center is what this ticket appears

09:27:17 14 to say.

09:27:17 15 A. Right. It's right of center.

09:27:21 16 Q. Okay. All right. So your marked patrol car issues Mr.

09:27:44 17 Trevino a ticket for failure to keep?

09:27:53 18 A. Right.

09:27:54 19 Q. Okay. Right of center and then, you -- I guess your traffic

09:28:01 20 officer stays there a little while until you can get there?

09:28:04 21 A. No. I was there. We pulled off the interstate because it

09:28:06 22 was on Interstate 240 and it was busy, so we pulled off of the

09:28:11 23 interstate down onto the service road.

09:28:13 24 Q. And how many officers were there?

09:28:18 25 A. Officers and agents or just Oklahoma City or --

09:28:21 1 Q. How many people were there?

09:28:24 2 A. Six, seven, eight.

09:28:25 3 Q. Does that include Mr. Trevino and his passenger?

09:28:28 4 A. Oh, no, no, no. Counting them, maybe eight, nine, ten,  
09:28:33 5 something there.

09:28:33 6 Q. So there were about eight law enforcement officers there for  
09:28:36 7 this traffic stop of failure to keep right of center?

09:28:39 8 A. Yes, ma'am.

09:28:42 9 Q. So you know that this man right here, Mr. Trevino knew that  
09:28:48 10 that couldn't possibly have been a traffic stop?

09:28:52 11 MR. GARDNER: Your Honor, we object to what Mr. Trevino  
09:28:54 12 knew or did know.

09:29:01 13 THE COURT: I sustain the objection.

09:29:03 14 Q. (BY MS. WILLIAMS) He certainly would have been well within  
09:29:07 15 his rights to say, no, you cannot search my car. Can I go on my  
09:29:11 16 way?

09:29:11 17 A. Correct.

09:29:12 18 Q. And he didn't do that?

09:29:13 19 A. No, ma'am.

09:29:13 20 Q. And you put him in the back of a car.

09:29:16 21 A. Yes.

09:29:16 22 Q. And --

09:29:17 23 A. I didn't. Another officer did.

09:29:21 24 Q. You as law enforcement put him in the back of a car?

09:29:25 25 A. Yes, ma'am.

09:29:30 1 Q. And closed the door?

09:29:33 2 A. Maybe briefly. Yes.

09:29:35 3 Q. And you conducted -- how long were you there?

09:29:39 4 A. I have no idea. Maybe 15 to 20 minutes.

09:29:43 5 Q. Are you sure about that?

09:29:45 6 A. No, ma'am. I'm not.

09:29:54 7 Q. Could it have been as much as an hour?

09:30:02 8 A. No.

09:30:04 9 Q. And did you physically search Mr. Trevino or did he empty

09:30:13 10 his pockets voluntarily for you?

09:30:15 11 A. I didn't. No, ma'am.

09:30:19 12 Q. Did anyone physically search Mr. Trevino or did he empty his

09:30:24 13 pockets?

09:30:24 14 A. I don't know, ma'am.

09:30:36 15 Q. In Oklahoma, are your patrol cars equipped for -- with

09:30:41 16 video?

09:30:41 17 A. No, ma'am. They're not.

09:30:42 18 Q. None of them?

09:30:43 19 A. Not Oklahoma City. No, ma'am.

09:30:46 20 Q. So when you make a DWI arrest, you don't have any video of

09:30:51 21 that?

09:30:51 22 A. No, ma'am.

09:30:56 23 Q. You did not have enough information at that point to obtain

09:31:01 24 a search warrant; is that correct?

09:31:05 25 A. No, ma'am.

09:31:10 1 Q. Did Mr. Trevino tell you why he had \$5,000 in his pocket?

09:31:17 2 A. Eventually, he told me that it was to buy food and take care  
09:31:21 3 of the horses.

09:31:23 4 Q. Did he tell you that he had been paid \$5,000 for breeding of  
09:31:28 5 a horse?

09:31:29 6 A. Not that I recall. No.

09:31:32 7 Q. Consult your report, if you don't mind. Does your report  
09:32:12 8 indicate that conversation?

09:32:17 9 A. It states that he was not able to provide a logical  
09:32:19 10 explanation for having such a large amount of cash on him.

09:32:23 11 Q. And whose opinion is that?

09:32:26 12 A. Mine.

09:32:30 13 Q. Mr. Trevino had a concealed handgun license in his wallet,  
09:32:34 14 did he not?

09:32:35 15 A. Yes, ma'am.

09:32:36 16 Q. And -- but he didn't have a weapon?

09:32:38 17 A. No, ma'am.

09:32:40 18 Q. No drugs?

09:32:42 19 A. None were found.

09:32:46 20 Q. Now, when you bring a canine officer to the scene and that  
09:32:51 21 canine alerts on the truck, you can go -- you can do -- you can  
09:32:55 22 tear that truck apart, can't you?

09:32:57 23 A. Yes, ma'am.

09:32:58 24 Q. But you didn't, did you?

09:33:02 25 A. I mean, I don't understand what you're asking. We searched



09:33:05 1 the vehicle. Yes.

09:33:06 2 Q. You could have taken it apart with a screwdriver and a  
09:33:10 3 wrench, couldn't you?

09:33:12 4 A. Yes, ma'am. We could have. But we could have disassembled  
09:33:15 5 the whole vehicle, but we didn't. No.

09:33:16 6 Q. Thank you. I'll offer Defendant's J-1.

09:33:21 7 MR. GARDNER: No objection, your Honor.

09:33:22 8 THE COURT: J-1's received.

09:33:30 9 MS. WILLIAMS: I don't have any further questions.

09:33:48 10 MR. DEGEURIN: No questions.

09:33:49 11 MR. WOMACK: Your Honor, briefly, just to -- I want to  
09:33:51 12 make sure it's clear about the stop.

09:33:52 13 THE COURT: All right.

09:33:53 14 CROSS-EXAMINATION

09:33:53 15 BY MR. WOMACK:

09:33:55 16 Q. You are special agent, or officer, or detective?

09:33:57 17 A. Detective, sir.

09:34:01 18 Q. Detective Martin, when y'all did this -- when the officers  
09:34:06 19 did the traffic stop, it was some time after 1:30?

09:34:10 20 A. Yes, sir.

09:34:10 21 Q. In the afternoon?

09:34:12 22 A. Correct.

09:34:13 23 Q. Now, when you stopped the vehicle, the first thing that your  
09:34:18 24 officer did, the traffic officer, y'all identified Mr. Trevino  
09:34:22 25 and Mr. Jimenez as being the only two people in the truck?

09:34:26 1 A. Yes, sir.

09:34:28 2 Q. And you're welcome to look at your notes if you need to. We

09:34:32 3 have a copy of the same notes. All the lawyers here do.

09:34:35 4 A. Thank you, sir.

09:34:36 5 Q. When you looked at -- well, you identified them and you said

09:34:40 6 that you got them out of the vehicle and put them in separate

09:34:43 7 cars, correct?

09:34:43 8 A. Yes, sir.

09:34:44 9 Q. And tell the jury, why would you do that? Why would you

09:34:47 10 separate them?

09:34:48 11 A. So we could verify their story to see if they were telling

09:34:51 12 the truth.

09:34:52 13 Q. And the way you'd do that is you would ask one of them

09:34:54 14 something?

09:34:54 15 A. Correct.

09:34:55 16 Q. And the other one couldn't hear it?

09:34:56 17 A. Correct.

09:34:56 18 Q. Then you'd go to the other person, ask them something and

09:34:59 19 the first guy couldn't hear it?

09:35:01 20 A. Correct.

09:35:01 21 Q. And you'd compare the stories?

09:35:02 22 A. Correct.

09:35:03 23 Q. Okay. So you get them out of the truck, you identify them,

09:35:07 24 separate them, and you get consent to search the truck?

09:35:11 25 A. Yes, sir.

09:35:12 1 Q. And to search their person?

09:35:14 2 A. Correct.

09:35:17 3 Q. And from Mr. Jimenez, you see there were suitcases in the

09:35:22 4 truck and he gives you consent to search his suitcase?

09:35:25 5 A. Yes, sir.

09:35:25 6 Q. Okay. So you searched the truck, you searched the

09:35:30 7 suitcases, and their persons, you find the \$5,000 on Mr. Trevino

09:35:37 8 but no drugs at all?

09:35:38 9 A. No, sir.

09:35:39 10 Q. And you find no hidden compartments in the truck?

09:35:42 11 A. No, sir.

09:35:46 12 Q. And there are no drugs or nothing illegal in the suitcases?

09:35:50 13 A. Correct.

09:35:51 14 Q. Okay. And then, you talked to both men?

09:35:55 15 A. Yes, sir.

09:35:55 16 Q. Separately?

09:35:56 17 A. Yes, sir.

09:35:57 18 Q. And Mr. Trevino tells you that he had picked up Mr. Jimenez

09:36:03 19 that -- earlier that day?

09:36:04 20 A. Yes, sir.

09:36:06 21 Q. That he had hired Mr. Jimenez to train horses?

09:36:09 22 A. Yes, sir.

09:36:10 23 Q. And had taken him to the race track to tour the facility?

09:36:14 24 A. Correct.

09:36:15 25 Q. And then, you talked to Mr. Jimenez and Mr. Jimenez says he

09:36:21 1 had flown into Will Rogers that morning at about 11:00?

09:36:25 2 A. Yes, sir.

09:36:26 3 Q. He'd been picked up by Mr. Trevino?

09:36:28 4 A. Correct.

09:36:28 5 Q. That he'd been hired to train horses for Mr. Trevino?

09:36:31 6 A. Correct.

09:36:31 7 Q. That they had gone to Remington Casino Park horse-racing

09:36:37 8 track?

09:36:37 9 A. Yes, sir.

09:36:37 10 Q. And that they had toured the race track?

09:36:39 11 A. Correct.

09:36:41 12 Q. And that they had gone back to the airport?

09:36:44 13 A. Yes, sir.

09:36:45 14 Q. And he thought they were going back to pick up someone?

09:36:48 15 A. Yeah. He stated they were going to pick up a friend of Mr.

09:36:51 16 Trevino's.

09:36:51 17 Q. Okay. And then, that was new information you didn't have

09:36:56 18 yet?

09:36:56 19 A. Correct.

09:36:57 20 Q. So you went back to Mr. Trevino and you asked him about

09:36:59 21 that?

09:36:59 22 A. I did.

09:37:00 23 Q. And he told you that he did not intend to pick up a friend,

09:37:04 24 but he met a friend at the airport?

09:37:06 25 A. No. He originally told me he had not been at the airport.

09:37:09 1 Q. Look at your report. When you went back to talk to Mr.  
09:37:13 2 Trevino, he said, well, yes, I did go to the airport and I met an  
09:37:16 3 old friend there.

09:37:16 4 A. I talked to Mr. Jimenez first.

09:37:18 5 Q. Right. And look on page 6 of your report, the very first  
09:37:23 6 full paragraph, Trevino said he saw one of his old friends while  
09:37:29 7 he was at the airport?

09:37:30 8 A. Page -- I don't have that page, sir.

09:37:35 9 Q. Does it have a page 6 at the top like mine does?

09:37:38 10 A. No, sir, it does not.

09:37:39 11 Q. Yours is a narrative?

09:37:45 12 A. Right here, sir.

09:37:46 13 Q. Okay. The third from the last paragraph on your report  
09:37:51 14 appears to be word-for-word the same as mine, doesn't it?

09:37:54 15 A. Yes, it is.

09:37:55 16 Q. Okay. So --

09:37:57 17 A. I'm sorry, sir. I got kind of confused on.

09:37:59 18 Q. I understand. That was my fault. I thought you had the  
09:38:02 19 same exact report. You have the same narrative, but you don't  
09:38:04 20 have page numbers like mine does?

09:38:06 21 A. Okay. I mean, Mr. Trevino did later say that he had been at  
09:38:09 22 the airport to meet a friend.

09:38:11 23 Q. Immediately?

09:38:12 24 A. But originally he said that he had not been at the airport.  
09:38:17 25 He was not coming from the airport.

09:38:18 1 Q. Right. He told you he was coming back from the track?

09:38:20 2 A. Yes, sir.

09:38:20 3 Q. Okay. But when you asked him about meeting someone with

09:38:24 4 Jimenez at the airport, he said, well, yeah, I met someone, a

09:38:27 5 friend at the airport. I didn't pick him up, but I met somebody

09:38:30 6 at the airport and Jimenez was with me?

09:38:33 7 A. Yes, sir.

09:38:33 8 Q. That's what he told you?

09:38:34 9 A. Yes, sir.

09:38:35 10 Q. Okay. Now, while you were doing this, you have some

09:38:41 11 Department of Homeland Security investigators that used to be

09:38:45 12 called ICE?

09:38:45 13 A. Yes, sir.

09:38:45 14 Q. Now it's called Department of Homeland Security

09:38:47 15 Investigations?

09:38:48 16 A. Yes, sir. Homeland Security Investigation.

09:38:50 17 Q. Some of them were present, were they?

09:38:52 18 A. Yes, sir.

09:38:53 19 Q. But you didn't identify any of them to Mr. Jimenez or Mr.

09:38:58 20 Trevino, did you?

09:38:58 21 A. No. I did not.

09:39:00 22 Q. And they didn't identify themselves either?

09:39:02 23 A. No, sir. As far as I know, they did not.

09:39:05 24 Q. Well, you put in the report the agents didn't identify

09:39:08 25 themselves?

09:39:08 1 A. As far as I know, they did not identify their self.

09:39:10 2 Q. Thank you. No further questions.

09:39:12 3 A. You're welcome.

09:39:14 4 MR. ESPER: I have none, your Honor.

09:39:15 5 MR. MAYR: None.

09:39:16 6 RE-DIRECT EXAMINATION

09:39:16 7 BY MR. GARDNER:

09:39:20 8 Q. Agent Martin, I want to break down what you termed these  
09:39:23 9 inconsistent statements.

09:39:24 10 A. Yes, sir.

09:39:24 11 Q. And based on what Mr. Womack asked you what Mr. Jimenez  
09:39:29 12 said, so what did Mr. Jimenez say about the trip to the airport?

09:39:34 13 A. His story was that he had been picked up that morning by Mr.  
09:39:38 14 Trevino at the airport. He had come to Oklahoma to work for Mr.  
09:39:44 15 Trevino as a horse trainer. They went to Remington Park, toured  
09:39:49 16 the park, toured the race track, I'm sorry, went back to the  
09:39:53 17 airport to meet a friend. Then Mr. Jimenez said that he did not  
09:39:57 18 meet the friend. He didn't meet the friend of Mr. Trevino. They  
09:40:01 19 stayed at the airport a short time, then they left and were  
09:40:04 20 headed back to the horse ranch.

09:40:05 21 Q. And did he tell you whether or not Mr. Trevino told him he  
09:40:10 22 met a friend?

09:40:10 23 A. That's what he said is that they were going to meet a  
09:40:13 24 friend.

09:40:13 25 Q. All right. The statement was he did not, in fact, meet a

09:40:16 1 friend? I'm trying to confuse you. I'm trying to confuse  
09:40:23 2 myself.

09:40:23 3 Now, did Mr. Jimenez say whether or not they, in fact,  
09:40:28 4 met that person? Why don't I do what Mr. Womack did. I'm  
09:40:42 5 referring to this line right here at the end. Right here.

09:40:49 6 A. Yes. Okay. Mr. Jimenez said that Mr. Trevino told him that  
09:40:53 7 his friend did not make it to the airport.

09:40:55 8 Q. Have you reviewed the video of the parking lot airport?

09:41:00 9 A. No, I have not, sir.

09:41:04 10 Q. Is there anything wrong with stopping an individual and  
09:41:07 11 identifying them?

09:41:09 12 A. No.

09:41:11 13 Q. Perfectly legal within the law, correct?

09:41:13 14 A. Yes, sir.

09:41:13 15 Q. All right. Now, Ms. Williams asked you when we were talking  
09:41:18 16 about the money, Ms. Williams asked you who made the statement,  
09:41:24 17 the money was -- the story regarding the money was inconsistent,  
09:41:29 18 and she asked you whose opinion that was and you said it was  
09:41:31 19 yours?

09:41:32 20 A. Yes, sir.

09:41:32 21 Q. Why did you feel the statement was inconsistent with the  
09:41:36 22 money he had in his possession?

09:41:40 23 A. He just told different stories and he was just evasive  
09:41:44 24 during -- while I was talking to him, the whole time.

09:41:47 25 Q. Define evasive for us.



09:41:50 1 A. Not telling the truth.

09:41:54 2 Q. I'll pass the witness, your Honor.

09:41:56 3 RE-CROSS EXAMINATION

09:41:56 4 BY MS. WILLIAMS:

09:42:00 5 Q. Did you keep the money?

09:42:01 6 A. No, ma'am.

09:42:02 7 Q. Why not?

09:42:04 8 A. Wasn't enough probable cause to keep the money, ma'am.

09:42:08 9 Q. No further questions.

09:42:10 10 THE COURT: Any further questions? May this witness be  
09:42:13 11 excused?

09:42:14 12 MS. WILLIAMS: No objection.

09:42:15 13 THE COURT: You may be excused, sir.

09:42:16 14 THE WITNESS: Thank you, sir.

09:42:31 15 MR. GARDNER: Your Honor, the government would call  
09:42:38 16 Special Agent Jonathan Spaeth.

09:43:03 17 (Witness sworn.)

09:43:16 18 THE COURT: Why don't you state your full name, please,  
09:43:25 19 sir, and spell your last.

09:43:25 20 THE WITNESS: Yes, sir. My name is Jonathan Spaeth.  
09:43:29 21 Spelling of my last name is S-P-A-E-T-H.

09:43:35 22 THE COURT: Your witness.

09:43:36 23 MR. GARDNER: Thank you, your Honor.

09:43:36 24 JONATHAN SPAETH, called by the Government, duly sworn.

09:43:38 25

DIRECT EXAMINATION

BY MR. GARDNER:

Q. Special Agent Spaeth, you and I met before. Could you please introduce yourself to the jury, and tell them who you are, what you do, and how long you've been doing it?

A. Yes, sir. Like I said, my name is Jonathan Spaeth. I'm an FBI agent, and I have been so for the past four years. Prior to that, I was a police officer and detective for ten years. During my time as a detective, narcotics investigator for six and assigned to the DEA Drug Task Force for two years.

Q. And where are you currently stationed, sir?

A. In Laredo, Texas.

Q. And are you involved in this investigation?

A. Yes, I am.

Q. And what were you tasked with back in 2011?

A. I was tasked with surveillance of the Ruidoso Downs race on September 5th in the auction on September 3rd and 4th.

MR. ESPER: Could we have the year, your Honor?

Q. (BY MR. GARDNER) The year?

A. Of 2011.

Q. I'd like to start with the auction first or, better yet, why as a general principle does law enforcement conduct surveillance?

A. Surveillance is an investigative tool utilized by the investigator to corroborate evidence gathered from other means, such as subpoenas, search warrants, confidential sources,

09:44:58 1 confidential informants, and they use that to develop and to  
09:45:04 2 corroborate the information provided. Also, to identify  
09:45:07 3 associates and patterns of activity by subjects.

09:45:10 4 Q. And you know Special Agent Scott Lawson sitting here at  
09:45:13 5 counsel table?

09:45:14 6 A. Yes, I do.

09:45:15 7 Q. Is he part of your same squad in Laredo?

09:45:17 8 A. He is on a separate squad.

09:45:18 9 Q. Same office?

09:45:19 10 A. Same office. Yes, sir.

09:45:20 11 Q. And did he provide you information before you went out to  
09:45:24 12 the auction in Ruidoso?

09:45:26 13 A. Yes, he did.

09:45:26 14 Q. And what information were you looking to gather out of that  
09:45:31 15 auction and race?

09:45:33 16 A. Special Agent Lawson requested that Task Force Ernesto  
09:45:38 17 Elizondo and I photograph and surveil Carlos Nayen and Jose  
09:45:44 18 Trevino and associates of Tremor Enterprises, LLC.

09:45:48 19 Q. So let's start with the first day of the auction. What day  
09:45:51 20 was that again, sir?

09:45:52 21 A. It was September 3rd, 2011.

09:45:54 22 Q. When did you arrive? What time of day did you arrive at the  
09:45:57 23 auction?

09:45:58 24 A. Right at the evening at approximately 6:30 p.m.

09:46:01 25 Q. And was the auction ongoing at that point?

09:46:03 1 A. Yes. The auction had been ongoing for approximately a half  
09:46:08 2 an hour.

09:46:08 3 Q. And were you able to identify an individual known as Carlos  
09:46:12 4 Nayan?

09:46:13 5 A. Yes, I was.

09:46:14 6 Q. Could you please bring up his photo? And, sir, I'm showing  
09:46:27 7 you Government's Exhibit 335E. Is that the individual you  
09:46:30 8 identified as Carlos Nayan?

09:46:32 9 A. Yes, sir.

09:46:33 10 Q. Was that the individual present at the auction on September  
09:46:36 11 3rd?

09:46:37 12 A. Yes, sir.

09:46:37 13 Q. And what activities did you observe Mr. Nayan doing?

09:46:43 14 A. When we arrived at the auction, he was to arrive at the  
09:46:48 15 auctioneer block in the outdoor arena, and he had several  
09:46:53 16 associates with him. And I specifically observed him bid,  
09:46:56 17 actively bid to single individuals in the crowd to bid on two  
09:47:00 18 particular horses.

09:47:02 19 Q. And when you were at the auction, how were the horses  
09:47:05 20 identified?

09:47:05 21 A. They're identified by number.

09:47:07 22 Q. And where is that number placed?

09:47:09 23 A. The number is placed in a -- it was in a catalog of  
09:47:13 24 approximately 350 horses.

09:47:16 25 Q. So you could look through the catalog, find out what

09:47:19 1 horse --

09:47:19 2 A. Yes.

09:47:19 3 Q. -- is being sold?

09:47:20 4 A. Yes.

09:47:21 5 Q. And how was the actual horse identified in the ring?

09:47:25 6 A. It is -- the horse is brought out by what I believe was a

09:47:29 7 trainer and brought around. They identify by number and then, by

09:47:33 8 its name.

09:47:34 9 Q. Okay. And that number's on the hip of the horse, correct?

09:47:37 10 A. Yes, sir.

09:47:38 11 Q. If you will, you may want to step back a little bit from

09:47:40 12 that microphone.

09:47:42 13 So was Mr. Nayen himself bidding on horses?

09:47:47 14 A. What I observed on a portion of 195 and 197, that he was --

09:47:53 15 he would be text-messaging, and while the bidding process would

09:47:55 16 be going on he, would be motioning through a nod to individuals

09:48:00 17 across the arena on the -- around the fence of the arena, and

09:48:04 18 they would be the ones to actually bid.

09:48:06 19 Q. Okay. That was my question. Following that nod, the person

09:48:09 20 that you observed him nodding to would then make a bid on a

09:48:12 21 horse?

09:48:12 22 A. Yes.

09:48:12 23 Q. Showing you what's been marked as Government's Exhibit 379A

09:48:17 24 and 379B. Do you recognize those photos, sir?

09:48:21 25 A. Yes, I do.

09:48:22 1 Q. All right. And did you, in fact, take those photos?

09:48:25 2 A. Yes, I did.

09:48:26 3 Q. Your Honor, offer Government's Exhibit 379A and 379B.

09:48:55 4 MR. ESPER: I have no objection.

09:48:56 5 THE COURT: All right. Hearing no objection, 379A and  
09:49:00 6 B are admitted.

09:49:01 7 Q. (BY MR. GARDNER) Show you, Agent Spaeth, I'm putting on the  
09:49:08 8 screen Government's Exhibit 379A. This number here, 163, the hip  
09:49:14 9 number you referred to to identify each horse?

09:49:16 10 A. Yes, sir.

09:49:17 11 Q. Okay. That's just an example of that particular horse had  
09:49:20 12 his own number, correct?

09:49:21 13 A. Yes, sir.

09:49:21 14 Q. Okay. And who is this individual here?

09:49:23 15 A. That was Carlos Nayan on September 3rd, 2011.

09:49:27 16 Q. And were you able to identify or later identify this  
09:49:31 17 individual based on the information you now know?

09:49:33 18 A. Yes. It was the jockey Esgar Ramirez.

09:49:36 19 Q. And were you able to identify this individual on the right?

09:49:39 20 A. That was his brother Raul Ramirez.

09:49:43 21 Q. So what activities were they conducting with Mr. Nayan?

09:49:49 22 A. They stood around him while Mr. Nayan was taking photographs  
09:49:56 23 with his phone of a particular horse, specifically, 197, and they  
09:50:01 24 were standing -- just conversing with him while he was  
09:50:06 25 text-messaging and nodding to other individuals in the crowd.

09:50:08 1 Q. So it would appear that they were associates?

09:50:11 2 A. Yes, sir.

09:50:11 3 Q. And when you said Mr. Nayan would take a picture of a horse,  
09:50:14 4 did you also observe him take a picture of the -- I'll call it  
09:50:18 5 the board that shows the hip number and the final price?

09:50:22 6 A. Yes, sir. I observed that the next night on September 4th.

09:50:27 7 Q. With respect to the pictures of the horses, we'll stick on  
09:50:31 8 that since we're on the night of September 3rd. After he would  
09:50:34 9 take a picture of a horse, what would he do then?

09:50:36 10 A. He would then put his head down and appeared he was in a  
09:50:39 11 manner consistent with sending a text message or an e-mail from a  
09:50:43 12 phone.

09:50:43 13 Q. And you said hip No. 197, do you recall the amounts that  
09:50:48 14 that horse went for?

09:50:49 15 A. Yes, I do.

09:50:50 16 Q. What was that, sir?

09:50:51 17 A. \$310,000.

09:50:53 18 Q. Were you able to observe that evening whether he bid on any  
09:50:56 19 other horses?

09:50:58 20 A. Yes.

09:50:59 21 Q. Do you recall the hip number there?

09:51:01 22 A. 195 when -- and during the bidding of that horse, it was,  
09:51:06 23 again, a signal to the crowd, and in between signalling, he would  
09:51:12 24 send text messages. It would appear to me text messages.

09:51:14 25 Q. Okay. Do you recall the final purchase price on that horse?

09:51:16 1 A. No. I don't.

09:51:17 2 Q. Do you recall if they, in fact, won that auction on that  
09:51:21 3 particular horse or not?

09:51:22 4 A. I do not recall.

09:51:24 5 Q. And was there another horse they bid on that night?

09:51:27 6 A. They took pictures of 199, however, I do not recall if they  
09:51:32 7 ended up purchasing that horse.

09:51:34 8 Q. So let's go ahead and move to Sunday, which would be  
09:51:38 9 September 4th, right?

09:51:40 10 A. Yes, sir.

09:51:40 11 Q. And was the auction ongoing on Saturday and Sunday?

09:51:44 12 A. Yes. It was a two-night affair.

09:51:48 13 Q. Now, I jumped you a little bit on Saturday about the auction  
09:51:52 14 board, and you said you observed that activity on Sunday.

09:51:56 15 A. Yes, sir.

09:51:56 16 Q. Okay. Could you explain to the jury, please?

09:51:59 17 A. Well, they actively bid on three horses that night. And  
09:52:03 18 when they were bidding at approximately 6:30, they began bidding  
09:52:07 19 on a horse registered 315 in the Ruidoso Downs book A Dash of  
09:52:14 20 Sweet Heat and was sold for \$650,000. And following the sale  
09:52:17 21 price or following the sale of that horse, they -- I observed  
09:52:22 22 Nayen in a manner consistent with taking a photo, take a photo of  
09:52:25 23 the final purchase price, which was displayed on their board.

09:52:31 24 THE COURT: What was name of the horse?

09:52:33 25 THE WITNESS: A Dash of Sweet Heat.



09:52:37 1 MR. GARDNER: A Dash Of Sweet Heat, your Honor.

09:52:42 2 THE COURT: And the sales price?

09:52:44 3 THE WITNESS: Was \$650,000.

09:52:46 4 THE COURT: All right. Pardon the interruption.

09:52:48 5 MR. GARDNER: Thank you, your Honor.

09:52:49 6 Q. (BY MR. GARDNER) And following his taking what in your  
09:52:53 7 testimony was a manner consistent with taking a picture, what did  
09:52:56 8 he do then?

09:52:57 9 A. He began, it appeared to be, sending text messages, taking  
09:53:02 10 notes or sending an e-mail following those photographs.

09:53:05 11 Q. And later that night, did you receive information that Mr.  
09:53:11 12 Jose Trevino might be present at that auction?

09:53:13 13 A. Yes, sir.

09:53:14 14 Q. And were you provided with a description of Jose Trevino  
09:53:18 15 prior to going to that auction?

09:53:20 16 A. Yes, I was.

09:53:21 17 Q. And did you -- were you able to identify anyone known as  
09:53:26 18 Jose Trevino that night?

09:53:27 19 A. At that time, no.

09:53:28 20 Q. Now, you and I had a discussion and you talked about  
09:53:30 21 conducting surveillance on Mr. Nayan and following him around the  
09:53:34 22 auction facility. Do you recall that information?

09:53:37 23 A. Yes, I do.

09:53:38 24 Q. Could you explain to the jury what happened when you  
09:53:41 25 followed Mr. Nayan from one part of the auction arena to the

09:53:45 1 other?

09:53:46 2 A. Well, after the purchase of the \$650,000 horse, I observed  
09:53:51 3 Mr. Nayan and he began to move around the crowd. And then, I  
09:53:56 4 observed him enter an indoor arena and he was coming -- he was  
09:54:00 5 going between the outdoor arena and the indoor arena, and  
09:54:04 6 approximately 7:45 between 7:45 and 8:00, a task force officer  
09:54:09 7 entered the outdoor arena -- or the indoor arena, correction. As  
09:54:13 8 we walked in there to our immediate right, we observed Mr. Nayan  
09:54:17 9 and another individual, which I wasn't able to identify, sitting  
09:54:21 10 there together having a discussion. And at that point, we left  
09:54:25 11 the indoor arena. We weren't able to photograph them inside  
09:54:28 12 there.

09:54:30 13 Q. And when you left that indoor arena, did you believe you  
09:54:35 14 were being followed?

09:54:36 15 A. Yes, I did.

09:54:37 16 Q. Okay. And could you explain that to the jury?

09:54:40 17 A. After we left the indoor arena, we went into an open area,  
09:54:44 18 which is like a shop area, and we noticed an individual,  
09:54:51 19 approximately six-two and bald head, Hispanic male, he began to  
09:54:55 20 follow us through the shop area. We were going through the shop  
09:54:58 21 area into an open cafeteria. At that point, I decided to duck in  
09:55:04 22 behind like a soda machine or in a little hallway to see if -- to  
09:55:09 23 see what this -- to observe the individual, and he stopped and he  
09:55:13 24 was looking around inside that cafeteria. And so, I reappeared  
09:55:17 25 into his vision and I walked out to the outdoor arena. When I

09:55:21 1 walked to the outdoor arena, he followed us out there, stood  
09:55:24 2 beside -- approximately about 20 feet from myself and the other  
09:55:28 3 task force officer. At that point, we decided that it was in our  
09:55:32 4 best interest to terminate our surveillance.

09:55:34 5 Q. And now, I'd like to move to the next day. That's the day  
09:55:37 6 of the race?

09:55:37 7 A. Yes, sir.

09:55:38 8 Q. Okay. And what race was that?

09:55:40 9 A. It was the All American at Ruidoso Downs 2011 Futurity race.

09:55:48 10 Q. All right. And was the purse on that \$2 million?

09:55:51 11 A. Yes, sir.

09:55:53 12 Q. And did you look through the race program?

09:55:54 13 A. Yes, I did.

09:55:55 14 Q. And were you able to determine a horse by the name of Big --

09:56:01 15 MR. DEGEURIN: Excuse me. Pardon me. May we approach  
09:56:04 16 just a moment?

09:56:18 17 (At the bench, on the record.)

09:56:20 18 MR. DEGEURIN: I've been notified that the -- I didn't  
09:56:26 19 want to say it out loud that the translator is not translating  
09:56:32 20 everything that's being said. That's not --

09:56:38 21 MR. SANCHEZ: Going too slow so that our client's not  
09:56:39 22 catching everything that's translating. It's moving on to the  
09:56:41 23 next on. I think it's --

09:56:45 24 MR. GARDNER: Slow down a little bit.

09:56:46 25 MR. SANCHEZ: I don't know whatever the solution is.

09:56:48 1 MR. DEGEURIN: Is it just the speed?

09:56:53 2 MR. PARRAS: Speed is what he said. He said that it  
09:56:53 3 was going too -- translation was going too -- that was verified  
09:56:54 4 by the lawyer that we have from Mexico.

09:56:58 5 THE COURT: Members of the jury, I'm going to give you  
09:56:59 6 your morning break. Remember the instructions. You'll have  
09:57:04 7 plenty of time to use the facilities. Try to be back and ready  
09:57:08 8 in 15 minutes.

09:57:38 9 (Jury not present.)

09:57:38 10 THE COURT: We're going to break, also, but I just want  
09:58:14 11 you to know that I've checked with the head interpreter and he  
09:58:17 12 says that everything is okay. There's some -- a little slowness.  
09:58:23 13 So I'm going to ask the lawyers to slow down just a little bit on  
09:58:27 14 the questioning.

09:58:29 15 MR. GARDNER: Yes, sir.

09:58:30 16 THE COURT: But he indicates that everything else  
09:58:32 17 should be correct. All right. Fifteen minutes.

10:15:44 18 (Recess.)

10:17:26 19 (Jury present.)

10:17:29 20 THE COURT: Mr. Spaeth, you understand you're still  
10:17:32 21 under oath?

10:17:32 22 THE WITNESS: Yes, sir.

10:17:32 23 THE COURT: All right. You may proceed.

10:17:35 24 Q. (BY MR. GARDNER) Special Agent Spaeth, I'm going to slow it  
10:17:42 25 down a little bit to make sure the interpreters are able to

10:17:46 1 translate to the defendants.

10:17:50 2 A. Yes, sir.

10:17:50 3 Q. If you could slow down your answer a little bit, too, that  
10:17:54 4 way everyone in the courtroom could hear.

10:17:56 5 A. Yes, sir.

10:17:57 6 Q. All right. I think we left off at you terminating your  
10:18:04 7 surveillance the night of September 4th, correct?

10:18:07 8 A. Yes, sir.

10:18:08 9 Q. All right. Did you -- actually, we got to Sunday. You  
10:18:14 10 attended the auction or the race itself, the All American  
10:18:17 11 Futurity in 2011?

10:18:19 12 A. Yes. On September 5th.

10:18:23 13 Q. Did you note a horse in that race of significance?

10:18:27 14 A. Yes. When I arrived, I obtained a program and reviewed it,  
10:18:32 15 and in the program, I noticed Big Daddy Cartel entered into the  
10:18:37 16 -- I believe it was the tenth race of the day for a purse of \$2  
10:18:42 17 million, and the owner, the listed owner of that horse was Tremor  
10:18:47 18 Enterprises, LLC.

10:18:47 19 Q. And were you able to conduct surveillance that day?

10:18:51 20 A. Yes.

10:18:53 21 Q. Did you have difficulty conducting surveillance that day?

10:18:56 22 A. Yes, I did.

10:18:56 23 Q. And why was that?

10:18:58 24 A. Due to the large crowd and our limited access to the owner's  
10:19:05 25 area, we were only able to photograph the race itself. And two

10:19:08 1 individuals carrying a life-size cardboard cutout of the horse  
10:19:13 2 and its jockey.

10:19:15 3 Q. And when you say the horse's jockey, do you recall the name  
10:19:18 4 of the jockey for Big Daddy Cartel?

10:19:21 5 A. Yes, listed in the program was Esgar Ramirez.

10:19:23 6 Q. And, again, I'm referring you to Government's Exhibit 379B.  
10:19:30 7 Little dark on the screen, but is that the Esgar Ramirez listed  
10:19:33 8 as the jockey?

10:19:34 9 A. Yes, sir.

10:19:34 10 Q. And you may have mentioned it, but who was the owner listed  
10:19:39 11 in the race program for Big Daddy Cartel?

10:19:43 12 A. The listed owner was Tremor Enterprises, LLC.

10:19:48 13 THE COURT: When you say Tremor, would you spell it?

10:19:51 14 THE WITNESS: T-R-E-M-O-R.

10:19:55 15 Q. (BY MR. GARDNER) And just tell the rest of the story. What  
10:19:59 16 happened with the race?

10:20:02 17 A. During that race, Big Daddy Cartel was disqualified for  
10:20:07 18 interference out of the gate.

10:20:11 19 Q. And was there anything else of significance that occurred  
10:20:13 20 after that?

10:20:16 21 A. Not that day. No.

10:20:17 22 Q. Were you able to identify either Mr. Nayen or Mr. Trevino  
10:20:21 23 during the course of the race day?

10:20:23 24 A. No, sir.

10:20:25 25 Q. And just so we're clear, this race occurred in 2011,

10:20:29 1 correct?

10:20:29 2 A. Labor Day 2011.

10:20:33 3 Q. And so, this was not the race where Mr. Piloto won. That

10:20:37 4 was 2010, correct?

10:20:38 5 A. Yes. 2010 was the race.

10:20:41 6 Q. May I have one moment, your Honor? Your Honor, I have

10:20:47 7 nothing further.

10:20:50 8 MS. WILLIAMS: Just a couple of questions your Honor.

10:20:52 9 CROSS-EXAMINATION

10:20:52 10 BY MS. WILLIAMS:

10:21:00 11 Q. Agent Spaeth, is it Spaeth?

10:21:01 12 A. Yes, ma'am.

10:21:03 13 Q. Had you ever been to a horse auction before?

10:21:06 14 A. No, ma'am.

10:21:07 15 Q. So you really have no idea whether what you saw was usual or

10:21:10 16 unusual?

10:21:12 17 A. With regards to what?

10:21:14 18 Q. With regard to how people act at a horse auction.

10:21:19 19 A. Again, what specific activity?

10:21:21 20 Q. Well, the specific activity that you've described to the

10:21:24 21 jury. You have no idea whether that's normal activity or

10:21:27 22 abnormal activity.

10:21:28 23 A. I just testified to what I observed that day with Mr. Nayan.

10:21:32 24 Q. I understand. And now what I'm asking you is, since you had

10:21:35 25 never been to a horse auction before, you have no idea whether

10:21:37 1 that activity that you just described is normal or abnormal.

10:21:43 2 A. I have no basis. I could only testify to the activities I  
10:21:46 3 observed that day.

10:21:47 4 Q. And when people -- when Mr. Nayen won the bid or won the  
10:21:57 5 auction of a horse, he wasn't the only person bidding; is that  
10:22:01 6 correct?

10:22:01 7 A. No.

10:22:03 8 Q. That's not correct or that is correct?

10:22:04 9 A. Well, that's correct. There was other people bidding.

10:22:07 10 Q. Other people were also bidding?

10:22:08 11 A. Yes, ma'am.

10:22:08 12 Q. And increments of the bid were sort of up to the auctioneer?

10:22:15 13 A. Yes, ma'am.

10:22:16 14 Q. And so, I don't know what the increments were, but if  
10:22:22 15 somebody bid \$275,000 and somebody bid \$285,000, and so on and so  
10:22:29 16 on, until someone stopped, is that the way an auction worked?

10:22:33 17 A. Yes, ma'am.

10:22:33 18 Q. And at no time did anybody that you saw just stand up and  
10:22:39 19 say, I'll pay XYZ for this horse?

10:22:44 20 A. I never observed that activity.

10:22:46 21 Q. And the next day at the race, I guess, third day.

10:22:53 22 A. Yes. September 5th.

10:22:55 23 Q. Mr. Gardner asked you, was there -- I can't remember exactly  
10:23:02 24 what the question was, but was there a horse of significance or  
10:23:05 25 was there a horse that you were paying attention to?



10:23:07 1 A. Yes, ma'am.

10:23:08 2 Q. And my question is, were you paying attention to it because  
10:23:12 3 its name was Cartel, or were you paying attention to it because  
10:23:15 4 it was owned by Jose Trevino?

10:23:19 5 A. I was paying attention to it based on information that I  
10:23:22 6 received from Special Agent Scott Lawson that the horse that was  
10:23:26 7 going to be entered was Big Daddy Cartel.

10:23:27 8 Q. So you already knew the name of the horse?

10:23:31 9 A. Yes, ma'am.

10:23:31 10 Q. And as you testified, that horse did not win?

10:23:33 11 A. No. It did not.

10:23:34 12 Q. Nothing further.

10:23:38 13 MR. DEGEURIN: No, your Honor.

10:23:39 14 MR. WOMACK: Yes, your Honor.

10:23:40 15 CROSS-EXAMINATION

10:23:40 16 BY MR. WOMACK:

10:23:41 17 Q. Special Agent Spaeth, what agency are you with again?

10:23:43 18 A. FBI.

10:23:44 19 Q. FBI. Okay. Now, had you been to a horse auction before  
10:23:58 20 this auction in 2011?

10:23:59 21 A. No, sir.

10:24:02 22 Q. Had you talked to other agents or other people about what to  
10:24:07 23 expect at a big-time horse auction?

10:24:12 24 A. No, sir.

10:24:13 25 Q. Okay. Did you know that the Ruidoso auction is like one of

10:24:20 1 the big horse auctions?

10:24:21 2 A. I learned prior to my assignment to this detail.

10:24:25 3 Q. Okay. And did you have a chance to look at the catalog of  
10:24:30 4 the horses that were being offered for sale at this big Ruidoso  
10:24:34 5 show?

10:24:35 6 A. When I arrived, I obtained a catalog.

10:24:37 7 Q. Okay. So you didn't have a chance to study it?

10:24:41 8 A. Are you saying prior to the -- prior to me going to Ruidoso?

10:24:45 9 Q. Right.

10:24:45 10 A. No, sir.

10:24:46 11 Q. Okay. And from the time you got the catalog to the time  
10:24:50 12 that the auction -- the sale started, how much time had you spent  
10:24:54 13 looking through the catalog?

10:24:56 14 A. When we arrived there, it was approximately already -- the  
10:25:02 15 auction was 30 minutes underway. I spent some time reviewing it  
10:25:06 16 before because I think the first horse that I noticed being 195.  
10:25:12 17 So probably about 30 horses in between there that was -- I  
10:25:15 18 actually took the time to review because, as I said before, I  
10:25:18 19 don't have a basis for --

10:25:19 20 Q. I gotcha. But you were there to watch Carlos Nayan, right?

10:25:25 21 A. Yes, sir.

10:25:26 22 Q. So if horses were being auctioned and he was standing there,  
10:25:32 23 were you looking at the catalog or were you looking at him?

10:25:35 24 A. My focus was on Mr. Nayan and I utilized the catalog to  
10:25:40 25 follow along.

10:25:41 1 Q. And really, looking at the catalog wouldn't be a lot of help  
10:25:47 2 to you, would it? I mean, you wouldn't know if what horse should  
10:25:49 3 be a good horse. You wouldn't know that.

10:25:51 4 A. No, sir.

10:25:52 5 Q. Okay. So you told us that when you watched Mr. Nayan, it  
10:25:58 6 was obvious to you that when certain horses -- these two or three  
10:26:05 7 horses when they were up on the block, he was texting someone,  
10:26:10 8 correct?

10:26:10 9 A. Manner consistent with texting. Yes, sir.

10:26:13 10 Q. It looked like he was texting someone?

10:26:14 11 A. Yes, sir.

10:26:15 12 Q. And also, you would see him nod to someone.

10:26:19 13 A. Yes, sir.

10:26:20 14 Q. And the person he was nodding to was some distance away,  
10:26:24 15 wasn't he?

10:26:25 16 A. Yes, sir.

10:26:26 17 Q. Using the courtroom as an example, assume that you're Nayan.  
10:26:30 18 The person he was nodding to, how far away was that person? You  
10:26:36 19 tell me when to stop. Am I too far away?

10:26:37 20 A. No. Keep going.

10:26:39 21 Q. Further back than this?

10:26:40 22 A. I would say the back wall because that was about the size of  
10:26:43 23 the arena.

10:26:43 24 Q. Okay. So if Mr. Nayan was where you were standing, the  
10:26:48 25 person he's nodding to would have been back here against this

10:26:51 1 wall as far as distance?

10:26:52 2 A. Yes, sir.

10:26:53 3 Q. Okay. And for your vantage point, you could see, it looked  
10:26:59 4 to you like they were acknowledging each other, correct?

10:27:03 5 A. It looked like -- what I testified to was I was -- I could  
10:27:09 6 observe Mr. Nayan. He would nod to someone in that crowd, and  
10:27:13 7 then, I would hear a bid come from that crowd.

10:27:16 8 Q. And it appeared to you -- and you're right. It appeared to  
10:27:20 9 you that the person he was nodding to, some maybe 40 feet away,  
10:27:26 10 would that be about right?

10:27:27 11 A. No. It would be greater distance than that.

10:27:30 12 Q. Greater than 40 feet?

10:27:31 13 A. Yes, sir.

10:27:31 14 Q. So somewhere beyond 40 feet away, you would notice someone  
10:27:35 15 raise a hand and bid on that horse?

10:27:38 16 A. I noticed the auctioneer would acknowledge the person. Say  
10:27:43 17 I'm the auctioneer, he would acknowledge the individual in the  
10:27:46 18 crowd.

10:27:47 19 Q. So it seemed to you -- again, you're right. It seemed  
10:27:51 20 reasonable at the time that Nayan was signaling that person to  
10:27:58 21 bid and the person bid, correct?

10:28:00 22 A. Yes, sir.

10:28:01 23 Q. Okay. Now, would you agree with me that because you were  
10:28:07 24 focused on Mr. Nayan, if there were other people there that were  
10:28:11 25 not watching him, they may not know that he was signaling other

10:28:15 1 people? In other words, it could go unnoticed by other people in  
10:28:20 2 the crowd, couldn't it?

10:28:21 3 A. That other people that were --

10:28:25 4 Q. I confused everybody, I'm sure. You're describing something  
10:28:28 5 that looks like a secretive communication, correct?

10:28:31 6 A. It appeared to be a signal.

10:28:33 7 Q. Yes. And secreted by the way he did it, correct?

10:28:37 8 A. It was discreet.

10:28:38 9 Q. Well, he didn't raise the hand and say, hey, you, bid  
10:28:41 10 another thousand dollars. He didn't do that, did he?

10:28:44 11 A. No, sir.

10:28:45 12 Q. He was nodding.

10:28:46 13 A. He was discreet. Yes, sir.

10:28:48 14 Q. And so, if the other person beyond 40 feet, if that person  
10:28:51 15 wasn't focused on him like you were, he wouldn't have seen that  
10:28:53 16 nod, would he?

10:28:56 17 A. Are you asking if that person across from him had the same  
10:28:59 18 attention that I did?

10:29:01 19 Q. He obviously did, correct?

10:29:02 20 A. Yes.

10:29:03 21 Q. Because he saw the nod?

10:29:04 22 A. Yes, sir.

10:29:04 23 Q. But other people standing right next to that person, if they  
10:29:07 24 weren't focused on Mr. Nayan, they may not have seen that,  
10:29:10 25 correct?

10:29:11 1 A. Correct.

10:29:11 2 Q. Okay. So I'm just trying to establish that there was some  
10:29:14 3 kind of secretive signaling going on between Mr. Nayan and the  
10:29:19 4 bidder, and you believe that's what happened, wasn't it?

10:29:23 5 A. That's what it appeared to be based on observations.

10:29:26 6 Q. And you're right. I just want to show there's a foundation  
10:29:30 7 for you thinking that. You had never seen that kind of activity  
10:29:35 8 before because you had never been to a horse auction?

10:29:38 9 A. No, sir.

10:29:38 10 Q. Okay. Since then, have you talked to other agents that go  
10:29:42 11 to horse auctions?

10:29:43 12 A. No, sir.

10:29:44 13 Q. Have you talked to owners of horses, buyers of horses,  
10:29:48 14 sellers of horses, anyone that routinely goes to auctions?

10:29:51 15 A. No, sir.

10:29:52 16 Q. So you don't know, like you've answered earlier, you don't  
10:29:59 17 know if that's common practice or not, do you?

10:30:01 18 A. I've never been to a horse auction. I've been to actual  
10:30:04 19 auctions, and I've never seen that behavior before.

10:30:06 20 Q. You've been to auctions where people are buying horses for  
10:30:11 21 600 or buying anything for \$650,000?

10:30:14 22 A. No, sir.

10:30:15 23 Q. Okay. Would you agree with me that if you were -- if you're  
10:30:19 24 in the know or think you're in the know and you know what horses  
10:30:23 25 are worth and which horses are really worth something, that you

10:30:27 1 might want to keep it a secret that you're bidding on this horse?

10:30:30 2 Does that make sense?

10:30:32 3 A. Can you rephrase it, please?

10:30:33 4 Q. Okay. What I'm saying, horses, if you wanted to buy

10:30:37 5 something really that you know has great value, it might be a

10:30:42 6 painting that to me looks like red paint on a stick.

10:30:46 7 A. Uh-huh.

10:30:46 8 Q. But you know it was painted by somebody great and that no

10:30:50 9 one knows who it's by and you know that painting's worth a lot,

10:30:54 10 you may want to keep it a secret that you know or that you're

10:30:57 11 interested in that piece of art, correct?

10:31:03 12 A. Based on the auctions that I've been to, if I wanted to

10:31:06 13 auction on something, they would just raise their hand. I only

10:31:09 14 can testify to what I observed that day in my limited knowledge

10:31:11 15 of the surveillance.

10:31:12 16 Q. Okay. But you've never been on anything that cost hundreds

10:31:16 17 of thousands of dollars, have you?

10:31:18 18 A. Gnaw. I've never bid on anything that cost over half a

10:31:22 19 million.

10:31:22 20 Q. I understand. And the horse that went for \$650,000, it was

10:31:34 21 called A Dash of Sweet Heat; is that right?

10:31:37 22 A. Yes, sir.

10:31:37 23 Q. Has anyone explained to you how horses are often named after

10:31:41 24 their mom and dad?

10:31:44 25 A. No, sir.

10:31:45 1 Q. Okay. And looking through the catalog, did you notice that  
10:31:51 2 by each horse, it would show its lineage on the daddy's side, we  
10:31:57 3 call it a sire, and on the mom's side, a damn. Did you notice it  
10:32:04 4 had the family trees of each horse, showing back two or three  
10:32:07 5 generations?

10:32:08 6 A. Underneath the name up at the very top of the catalog, they  
10:32:12 7 would have name of the horse and then, I guess, how it was -- the  
10:32:16 8 horses they used to breed it.

10:32:18 9 Q. Did you notice it actually went back like two or three  
10:32:21 10 generations? Not just mom and dad, it would show grandma,  
10:32:24 11 granddad, grandpas, granddads?

10:32:26 12 A. I don't recall the particular lineage of that horse.

10:32:29 13 Q. Because it wasn't important to you. It meant nothing to  
10:32:32 14 you?

10:32:32 15 A. My detail at the time was to conduct surveillance.

10:32:34 16 Q. Okay. I understand. Now, if you remember, how many people  
10:32:42 17 bid on a Dash Of Sweet Heat?

10:32:44 18 A. I do not recall.

10:32:45 19 Q. Dozens?

10:32:47 20 A. I do not recall.

10:32:48 21 Q. Okay. Do you remember where the bidding started on that  
10:32:51 22 horse?

10:32:52 23 A. No. I do not.

10:32:53 24 Q. Was it -- if you remember, was it more or less than  
10:32:56 25 \$100,000?



10:32:57 1 A. I do not remember.

10:32:58 2 Q. Do you remember what the last bid was that didn't buy the  
10:33:02 3 horse? In other words, how much lower was the last bid than  
10:33:05 4 \$650,000?

10:33:05 5 A. I do not recall.

10:33:06 6 Q. Was it pretty close to it, though?

10:33:08 7 A. I don't recall.

10:33:10 8 Q. You weren't paying any attention to the numbers, were you?

10:33:13 9 A. It was actually going on so fast that I wasn't able to take  
10:33:16 10 accurate notes at that time.

10:33:17 11 Q. And it was going fast because the auctioneer talking in the  
10:33:22 12 way they talk, asked for bids and somebody raised their hand,  
10:33:26 13 correct?

10:33:26 14 A. Yes, sir.

10:33:27 15 Q. And hands were going up in different places around the area?

10:33:31 16 A. Yes.

10:33:31 17 Q. Okay. From your work on this case, I take it you don't know  
10:33:49 18 whether it's common at big horse auctions where really fast  
10:33:56 19 horses are sold to have these straw bidders, these nobodys  
10:34:01 20 bidding on horses. You wouldn't know that, would you?

10:34:04 21 A. Based on what I knew at the time, I knew that Mr. Nayen and  
10:34:09 22 Mr. Trevino employed several people that would assist them with  
10:34:14 23 the bidding at the time.

10:34:16 24 MS. WILLIAMS: Objection. Nonresponsive.

10:34:19 25 Q. (BY MR. WOMACK) Did you know it was very common for buyers

10:34:23 1 -- oh, I'm sorry.

10:34:24 2 THE COURT: Objection is overruled. You may inquire if  
10:34:28 3 you wish.

10:34:29 4 Q. (BY MR. WOMACK) Did you know it was very common for lots of  
10:34:34 5 buyers, the big buyers buying the fast horses, the ones buying  
10:34:40 6 big race horses with two thirds of a million dollars, did you  
10:34:45 7 know it was common for them to employ agents or straw buyers to  
10:34:48 8 raise their hand for them?

10:34:49 9 A. Sir, I can't accurately testify to how those operate.

10:34:53 10 Q. The answer is no, you didn't know that?

10:34:55 11 A. I can't testify to how other individuals operate.

10:34:57 12 Q. I understand. Let's go to the next day. Was the All  
10:35:01 13 American Futurity the next day?

10:35:03 14 A. There was two auctions on September 3rd, September 4th, and  
10:35:07 15 then, the All American on September 5th, the Monday, Labor Day.

10:35:11 16 Q. Okay. Did you know then or now that the All American  
10:35:18 17 Futurity for quarter horse race, it's the biggest quarter horse  
10:35:23 18 race in America. Did you know that?

10:35:24 19 A. I learned that at the time.

10:35:26 20 Q. I'm sorry?

10:35:26 21 A. I learned that prior to going.

10:35:29 22 Q. Okay.

10:35:30 23 A. To Ruidoso.

10:35:31 24 Q. It's like the Kentucky Derby of quarter horse racing. You  
10:35:35 25 knew that?

10:35:35 1 A. I knew it was a significant race. The most significant in  
10:35:38 2 that type of horse racing.

10:35:39 3 Q. Right. For the whole country, it's the biggest. You knew  
10:35:42 4 that?

10:35:43 5 A. Yes. I knew it was the most significant one.

10:35:46 6 Q. And did you know that every race -- every All American  
10:35:51 7 Futurity being the biggest race in America because it's in New  
10:35:56 8 Mexico, it is tightly controlled by the New Mexico Racing  
10:36:00 9 Commission. Do you know that?

10:36:01 10 A. No. I did not know that.

10:36:03 11 Q. Have you ever heard of the New Mexico Racing Commission?

10:36:06 12 MR. GARDNER: Your Honor, I'm going to object. I think  
10:36:08 13 we're getting outside the scope of the direct examination of this  
10:36:10 14 witness.

10:36:11 15 MR. WOMACK: Sir, he's talking about going to the race.  
10:36:13 16 I want to make sure we know if he knows what this race is.

10:36:15 17 THE COURT: I don't think he knows anything.

10:36:21 18 Q. (BY MR. WOMACK) I didn't say that. His Honor did. And no  
10:36:25 19 one expects you to know all about horses. I'm just asking if you  
10:36:29 20 knew these.

10:36:29 21 THE COURT: Or the racing commission.

10:36:31 22 MR. WOMACK: Yes, sir. Thank you.

10:36:32 23 Q. (BY MR. WOMACK) But you did learn that it was the biggest  
10:36:34 24 race in America for quarter horses. You know that and I was  
10:36:38 25 asking if you knew about the racing commission. You said you

10:36:40 1 don't?

10:36:41 2 A. No. I don't.

10:36:41 3 Q. That's fair. You said that -- I forget his name now. Big  
10:36:48 4 Daddy Cartel. Do you know how he has the name Cartel? Do you  
10:36:55 5 know how he got the name Cartel?

10:36:57 6 A. For that particular horse?

10:36:58 7 Q. Yes.

10:36:59 8 A. No. I do not.

10:37:00 9 Q. So no one told you that if you go back generations and  
10:37:03 10 generations, that one of his forefathers or mothers was named  
10:37:08 11 Cartel?

10:37:09 12 MR. GARDNER: Your Honor, I'm going to object at this  
10:37:10 13 point. He answered the question he didn't know how Big Daddy  
10:37:13 14 Cartel was named.

10:37:13 15 THE COURT: And he's answered that he didn't go back  
10:37:15 16 generations.

10:37:16 17 MR. WOMACK: Thank you, your Honor.

10:37:17 18 Q. (BY MR. WOMACK) Special Agent Spaeth, you said that Big  
10:37:28 19 Daddy Cartel was disqualified. Do you know that he was  
10:37:30 20 disqualified for bumping into another horse?

10:37:34 21 A. That's what I recall from the race at the time.

10:37:37 22 Q. And if you -- have you ever run track before?

10:37:42 23 A. Yes, I did.

10:37:42 24 Q. Would you agree with me -- were you a sprinter?

10:37:46 25 A. I was not a very good sprinter, but I did.

10:37:48 1 Q. But you -- I was a sprinter. If you come out of the  
10:37:53 2 starting blocks and you bump into another runner, that slows you  
10:37:55 3 down, doesn't it?

10:37:57 4 A. Yes, it does. I was very slow so.

10:38:05 5 Q. So you might -- you would slow yourself down and you could  
10:38:08 6 also impede the other runner, correct?

10:38:10 7 A. Yes, sir.

10:38:11 8 Q. And so, if it's humans racing or quarter horse racing, if  
10:38:17 9 horses bump into each other, they could be disqualified for that,  
10:38:21 10 correct?

10:38:23 11 A. All I know is that day, it was disqualified for interference  
10:38:27 12 of another horse.

10:38:28 13 Q. And you saw the race and the interference was that the  
10:38:31 14 horses bumped into each other?

10:38:34 15 A. I was quite a ways from the gate, out of the gate, so I  
10:38:37 16 can't testify to what the interference was.

10:38:40 17 Q. Okay.

10:38:41 18 A. Of the horse.

10:38:41 19 Q. A moment ago, you told me that you understood it was that  
10:38:44 20 they bumped into each other?

10:38:45 21 A. I believe interference. I didn't observe it. That's what I  
10:38:48 22 think you're asking.

10:38:50 23 Q. Thank you, sir. I have no further question.

10:38:59 24 MR. ESPER: I have nothing, Judge.

10:39:00 25 MR. MAYR: None.

10:39:01 1 THE COURT: Any redirect?

10:39:02 2 RE-DIRECT EXAMINATION

10:39:02 3 BY MR. GARDNER:

10:39:03 4 Q. Were you the case agent in this case, Special Agent?

10:39:05 5 A. No, sir.

10:39:06 6 Q. And are you allowed to use your common sense and training  
10:39:12 7 when you make your observations on surveillance?

10:39:14 8 A. Yes, I am.

10:39:15 9 Q. No further question, your Honor.

10:39:17 10 THE COURT: May this witness be excused?

10:39:19 11 MS. WILLIAMS: No objection.

10:39:20 12 THE COURT: You may be excused, sir.

10:39:22 13 THE WITNESS: Thank you, sir. Thank you.

10:39:25 14 THE COURT: Call your next witness.

10:39:26 15 MR. GARDNER: Your Honor, government calls Jane Eckert.

10:39:59 16 (Witness sworn.)

10:40:15 17 THE COURT: Tell us your full name, please, and spell  
10:40:26 18 your last.

10:40:26 19 THE WITNESS: Jane Eckert, E-C-K-E-R-T.

10:40:31 20 JANE ECKERT, called by the Government, duly sworn.

10:40:31 21 DIRECT EXAMINATION

10:40:31 22 BY MR. GARDNER:

10:40:32 23 Q. Good morning, Ms. Eckert. You and I met before.

10:40:38 24 Would you please introduce yourself to the ladies and  
10:40:40 25 gentlemen of the jury, and tell them what you do for a living?

10:40:42 1 A. I'm Jane Eckert. I am an accountant and I have been in the  
10:40:48 2 industry for, oh, 20 years, and I was employed at Heritage Place  
10:40:56 3 in Oklahoma City.

10:40:57 4 Q. And you're no longer employed there, correct?

10:40:59 5 A. No.

10:40:59 6 Q. Would you let the ladies and gentlemen of the jury know the  
10:41:02 7 dates of your employment at Heritage Place?

10:41:04 8 A. I worked there from January 2006 to December 2006 and then,  
10:41:09 9 again, from July 2008 until May 2012.

10:41:16 10 Q. And what were your duties at Heritage Place?

10:41:19 11 A. My title was controller. I did all the accounting. I paid  
10:41:22 12 all the bills. I was also the office manager and HR. It's a  
10:41:29 13 small office.

10:41:31 14 Q. And where is Heritage Place auction house?

10:41:33 15 A. It is in Oklahoma City close to the airport.

10:41:36 16 Q. And what is Heritage Place auction house?

10:41:38 17 A. They auction quarter horse for racing mostly. There are  
10:41:45 18 some people that buy for other reasons, but majority is for  
10:41:49 19 quarter horse racing.

10:41:50 20 Q. And how many auctions does Heritage Place hold each year?

10:41:54 21 A. During the time that I was there, they held three auctions  
10:41:58 22 per year.

10:42:00 23 Q. And do they have a title?

10:42:01 24 A. Each auction has a title. Yes.

10:42:03 25 Q. And what are those titles?

10:42:04 1 A. The January sale is called the winter mixed sale. The one  
10:42:09 2 in September is the quarter horse yearling sale. And the October  
10:42:14 3 or November sale is the fall mixed sale.

10:42:21 4 Q. I'm going to do what Ms. Fernald did yesterday, helps me  
10:42:28 5 keep track of things.

10:42:29 6 So you said the first auction occurs what part of the  
10:42:33 7 year?

10:42:33 8 A. January.

10:42:34 9 Q. And the name of that auction?

10:42:36 10 A. Winter mixed sale.

10:42:57 11 Q. And the next sale?

10:42:58 12 A. September.

10:43:01 13 Q. And what is the name of the September sale?

10:43:03 14 A. Quarter horse yearling sale.

10:43:19 15 Q. And the last auction?

10:43:20 16 A. Is either last of October, first of November and it's the  
10:43:23 17 fall mixed sale.

10:43:35 18 Q. Would you generally describe to the ladies and gentlemen of  
10:43:39 19 the jury the auction process, how you organize an auction, how do  
10:43:45 20 the horses get there, and how are the horses sold, and let's stop  
10:43:48 21 there and then, we'll ask some questions after that.

10:43:51 22 A. To get ready for a sale, first thing they do is there's a  
10:43:56 23 form they fill out if they want to enter a horse, and there is a  
10:44:00 24 \$600 fee to enter a horse. There is a consignment secretary that  
10:44:05 25 handles all the paperwork for that part of it. Then the week



10:44:10 1 before the sale, the horses are transported in, and they are  
10:44:15 2 stabled there on the grounds. And the auctions start at 10:00  
10:44:20 3 a.m. each day. They sell either half or a third, depending on if  
10:44:25 4 it's a two- or three-day sale of the horses each day, even it  
10:44:30 5 out.

10:44:31 6 And the Heritage Place takes five percent of the sales,  
10:44:39 7 the selling price of each horse. A horse can either be sold, it  
10:44:45 8 can be withdrawn if it's either injured or, for whatever reason,  
10:44:49 9 they change their mind and do not want to sell the horse. It can  
10:44:52 10 be repurchased, which means that the owner didn't get enough  
10:44:57 11 money for the horse, and so, they decide that they are not  
10:45:00 12 actually going to let it go, and they still pay five percent on  
10:45:04 13 that repurchase price.

10:45:05 14 Q. So how long before the actual auction dates do the horses  
10:45:09 15 arrive at the auction?

10:45:12 16 A. The auctions always start on Thursday or Friday and go  
10:45:15 17 through Saturday. The horses generally are not allowed to arrive  
10:45:21 18 before Tuesday of that week.

10:45:22 19 Q. And do they have to be all present at a certain date?

10:45:25 20 A. Yes. They have to be there the day before they're supposed  
10:45:30 21 to be sold.

10:45:30 22 Q. Okay. And each horse is assigned a number. We heard  
10:45:37 23 testimony on that. So does the auction break it up by hip number  
10:45:41 24 per day of the auction?

10:45:42 25 A. Yes.

10:45:42 1 Q. So how does a horse get brought into the auction ring to be  
10:45:45 2 bid on?

10:45:46 3 A. Somebody from either an agent or somebody that works for the  
10:45:52 4 owner has control of the horse up until, like, one or two horses,  
10:45:57 5 before it's their turn, and then, the horse is handed off to one  
10:46:01 6 of the ring men, who then lead the horse into the auction ring,  
10:46:07 7 because there's a prep area behind the auction ring.

10:46:12 8 Q. When you say prep area, what goes into prepping a horse for  
10:46:16 9 sale?

10:46:17 10 A. They walk it around a few times, just to get it -- because  
10:46:21 11 they're kind of high-strung, and they walk the horse around until  
10:46:27 12 it's their turn and then, they hand it over, and they walk it in  
10:46:32 13 the ring, which is a horseshoe shaped and there's -- it's a  
10:46:37 14 one-way street basically, one way in, one way out.

10:46:40 15 Q. So if people bid on the horse and when somebody wins, how do  
10:46:43 16 they pay for that?

10:46:46 17 A. It depends on the arrangements that they've made. They can  
10:46:52 18 -- there's a formula they can fill out ahead of time to be  
10:46:55 19 allowed credit. It's a bank transaction form. Basically it  
10:47:01 20 gives all their banking information, which is either notarized by  
10:47:05 21 their bank or it's called and verified that the funds would be  
10:47:10 22 available up to a certain amount so that they're pre-approved for  
10:47:13 23 a certain amount of sale.

10:47:14 24 They could also be approved by the general manager for  
10:47:21 25 a certain amount. Otherwise, we expect to collect cash or check

10:47:26 1 at the time of sale.

10:47:27 2 Q. Or wire. Are wires permitted, too?

10:47:30 3 A. Right. Yes.

10:47:31 4 Q. Do you know an individual by the name of Ramiro Villarreal?

10:47:35 5 A. Yes.

10:47:36 6 Q. And when did you first encounter Mr. Villarreal?

10:47:39 7 A. My first auction in January of 2006.

10:47:42 8 Q. 2006. And what type of horses did Mr. Ramiro Villarreal  
10:47:58 9 purchase?

10:47:58 10 A. I'm not sure what you're asking.

10:48:00 11 Q. In terms of the price.

10:48:04 12 A. He, as I recall, purchased multiple horses and some were  
10:48:09 13 more expensive.

10:48:11 14 Q. And did you consider him an owner or an agent as you  
10:48:15 15 testified to?

10:48:16 16 A. Probably more of an agent.

10:48:24 17 Q. And what was the length of time in which you knew Mr.  
10:48:29 18 Villarreal to purchase horses? When did he stop essentially  
10:48:33 19 coming to the auction?

10:48:34 20 A. I don't remember the exact timeframe. I know all during  
10:48:38 21 2006, he did, and when I returned in 2008, he was still a steady  
10:48:46 22 customer. Sometime probably around 2009. I think I saw him at  
10:48:55 23 an auction that he didn't purchase anything, but I don't remember  
10:48:59 24 the exact date.

10:49:00 25 Q. And did you see him after 2009?

10:49:06 1 A. I don't remember the timing, but I do remember that Jeff  
10:49:11 2 Tebow told me that he died.

10:49:14 3 MR. FINN: Objection. Excuse me, I'm going to object  
10:49:16 4 to hearsay.

10:49:17 5 Q. (BY MR. GARDNER) So about 2009 was the last time you saw him  
10:49:19 6 to the best of your recollection?

10:49:20 7 A. I think so.

10:49:22 8 Q. Okay. I'm not asking for an exact date so just  
10:49:26 9 approximately.

10:49:27 10 At some point, did you come to know an individual by  
10:49:29 11 the name of Carlos?

10:49:32 12 A. Yes.

10:49:42 13 Q. Is that the individual you know as Carlos Nayan on your  
10:49:44 14 screen?

10:49:44 15 A. Yes.

10:49:45 16 Q. Okay. That's Government's Exhibit 335E. Did you ever come  
10:49:50 17 to know a Fernando Garcia?

10:49:51 18 A. Yes.

10:49:53 19 Q. Actually, Mr. Garcia just stood up, right? Is that the  
10:50:02 20 individual you know as Mr. Garcia?

10:50:04 21 A. Yes.

10:50:05 22 Q. And how do you know Mr. Garcia?

10:50:08 23 A. Through purchasing horses at Heritage Place.

10:50:12 24 Q. And when did Mr. Garcia -- let me back up. Could you put up  
10:50:16 25 Mr. Nayan again? When did Carlos Nayan first start appearing at

10:50:24 1 the auction house?

10:50:26 2 A. I think January of 2010.

10:50:36 3 Q. And when did Fernando Garcia start appearing at the auction  
10:50:43 4 house?

10:50:43 5 A. At the same time.

10:50:51 6 Q. Can you describe the interaction between those two based on  
10:50:58 7 your observations?

10:51:01 8 A. Carlos did not speak any English that I was aware of.

10:51:05 9 Fernando always translated for Carlos.

10:51:09 10 Q. And talking about the horse?

10:51:12 11 A. The transactions. The times that they spoke to me, it had  
10:51:18 12 to do with the paying for the horses that were purchased.

10:51:27 13 Q. And what seemed to be the relationship between them in terms  
10:51:30 14 of supervisor and employee, if there was any? Who was in charge,  
10:51:37 15 I guess?

10:51:38 16 A. It seemed that Carlos was.

10:51:41 17 Q. Do you recall how many auctions they attended together?

10:51:48 18 A. I think they were at every one that I can recall from  
10:51:52 19 January until I left in 2012.

10:51:59 20 Q. That would be three in 2010 and three --

10:52:02 21 A. So that would be like seven.

10:52:03 22 Q. Seven total. And did they appear to have the same  
10:52:15 23 relationship during the course of your interaction with them over  
10:52:18 24 these seven auctions?

10:52:19 25 A. It seemed the same. Yes.

10:52:21 1 Q. Did Carlos and Defendant Fernando Garcia purchase a lot of  
10:52:28 2 horses?

10:52:28 3 A. Quite a few.

10:52:31 4 Q. Was that consistent through each one of these seven  
10:52:33 5 auctions?

10:52:35 6 A. Fairly consistent.

10:52:37 7 Q. And were these inexpensive horses or expensive horses?

10:52:40 8 A. No. They were expensive.

10:52:43 9 Q. And once they purchased horses, were either Mr. Nayan or Mr.  
10:52:49 10 Garcia listed as the purchaser of the horse on your records?

10:52:53 11 A. I don't believe so.

10:52:55 12 Q. Now, is there a difference between, I'll use the term,  
10:53:00 13 bidder and purchaser?

10:53:01 14 A. Yes, there can be.

10:53:03 15 Q. And can you explain that to the jury?

10:53:05 16 A. The bidder can be basically anybody that has authority on  
10:53:09 17 behalf of somebody else to purchase horses. The trainer  
10:53:13 18 sometimes will purchase horses for the owner because sometimes  
10:53:18 19 they are more familiar with horses instead of the ones that are  
10:53:25 20 going to be training the horse. It could be another family  
10:53:29 21 member that can also sign a form that gives another person the  
10:53:36 22 full rights to be their agent. And there's also informal agents.  
10:53:41 23 Q. And why do buyers use agents?  
10:53:45 24 A. Sometimes because the buyer's not able to travel, not able  
10:53:49 25 to be present. Some of the owners have other jobs other than

10:53:56 1 just owning horses. I'm sure there's a variety of reasons.

10:54:02 2 Q. Going back to the horses purchased by Carlos Nayen and  
10:54:06 3 Fernando Garcia, did you feel that the purchasers were real  
10:54:12 4 people?

10:54:14 5 A. Sometimes yes. Sometimes the name of the -- it was a  
10:54:21 6 company. Not a person's name.

10:54:22 7 Q. So what keyed you to believe that some of the names weren't  
10:54:31 8 real?

10:54:31 9 A. When somebody doesn't want it known who the actual purchaser  
10:54:37 10 is, they will use a company name; and in that case, I don't ever  
10:54:42 11 get a full address.

10:54:46 12 Q. I want to give you a couple of company names right now, see  
10:54:49 13 if you recall. Let me ask you this. Do you recall any company  
10:54:52 14 names that Fernando Garcia or Carlos Nayen used?

10:55:02 15 A. In some of these, I'm not sure what the relationship was but  
10:55:07 16 LA Horses.

10:55:28 17 Q. So LA Horses. Just the initials LA?

10:55:30 18 A. Right.

10:55:31 19 Q. LA Horses. Any others?

10:55:42 20 A. I'm drawing a blank. FF Stables.

10:55:44 21 Q. FF Stables. If I use the term Basic Enterprises, would that  
10:55:57 22 refresh your recollection?

10:55:59 23 A. That was one form of payment. I don't remember that being  
10:56:07 24 one of the purchase names.

10:56:08 25 Q. You keyed me that I probably didn't ask the best question.

10:56:13 1 So I guess the question is, the payments made for the  
10:56:19 2 purchase of those horses by Fernando Garcia and Carlos Nayan, who  
10:56:23 3 were those people?

10:56:25 4 A. The wire transfers, Basic Enterprises, Grupo Aduanero, ADT  
10:56:35 5 Petro Servicios. And I think one time, there was another one and  
10:56:38 6 I don't recall the name.

10:56:43 7 Q. Grupo, G-R-U-P-O, Aduanero, A-D-U-A-N-E-R-O. And ADT Petro  
10:56:55 8 Servicios? Is that correct?

10:56:56 9 A. Yes.

10:56:56 10 Q. If I were to use the company Fast And Furious, would that  
10:57:08 11 refresh your recollection?

10:57:10 12 A. Yes.

10:57:14 13 Q. Did you ever meet the individuals who owned or control these  
10:57:17 14 companies?

10:57:18 15 A. Not that I'm aware of.

10:57:34 16 Q. And so, generally, could you tell us any particular auction  
10:57:37 17 that Carlos Nayan and Fernando Garcia bought horses, how would  
10:57:43 18 they interact with you and the auction house in terms of  
10:57:46 19 identifying the horses they purchased and then, arranging for  
10:57:52 20 payments?

10:57:52 21 A. Usually they would go through Tyler Graham and Tyler Graham  
10:57:58 22 would notify me the hip number and the name of the horse that I  
10:58:03 23 could expect payment from grouped together.

10:58:08 24 Q. And who is Tyler Graham?

10:58:10 25 A. Tyler Graham is grandson of one of the owners of Heritage



10:58:10 1 Place.

10:58:15 2 Q. And does he have a role in Heritage Place company?

10:58:18 3 A. I think he's on the board of directors.

10:58:20 4 Q. And when you say he would notify you, was he acting in his  
10:58:23 5 capacity as board of director or as an agent?

10:58:26 6 A. As I understood it, an agent. He was the agent in the  
10:58:30 7 January sale where Dashin Follies was purchased.

10:58:34 8 Q. Is that the first time you noticed Tyler Graham acting as an  
10:58:39 9 agent for --

10:58:39 10 A. Yes.

10:58:39 11 Q. -- Fernando and Carlos, Fernando Garcia and Carlos Nayan?

10:58:53 12 I'm going to show you Government's Exhibit 403 for  
10:58:57 13 demonstrative purposes only. Are you familiar with that form?

10:58:59 14 A. Yes.

10:59:00 15 Q. And what form is that?

10:59:01 16 A. That's an 8300. It's required by the IRS.

10:59:05 17 Q. Are you required to fill these forms out in the course of  
10:59:09 18 your duties as controller for Heritage Place?

10:59:12 19 A. Yes.

10:59:12 20 Q. Your Honor, I'd offer Government's Exhibit 403 for  
10:59:16 21 demonstrative purposes only.

10:59:18 22 MR. WOMACK: No objection.

10:59:19 23 MR. MAYR: No objection.

10:59:21 24 THE COURT: It's received.

10:59:25 25 Q. (BY MR. GARDNER) What is this form to you, Ms. Eckert?

10:59:33 1 A. Any time over the course of an action, if \$10,000 or more  
10:59:36 2 was received in cash or in multiple instruments, like money  
10:59:44 3 order, cashier's checks, then I would fill those out to the best  
10:59:51 4 of my ability, based on information collected by the cashiers at  
10:59:54 5 the time of the purchase.

10:59:55 6 Q. Okay. So let's talk about the information. So report of  
11:00:00 7 cash payments over \$10,000. I'm highlighting part 1 of  
11:00:05 8 Government's Exhibit 403. What is the purpose of that section?

11:00:10 9 A. That is the person who actually appeared at the window with  
11:00:14 10 the cash.

11:00:18 11 Q. And then, part two?

11:00:22 12 A. If that person provided cash but was paying on behalf of  
11:00:27 13 someone else, the horse was going to, like, be registered in  
11:00:33 14 their name. Or, like, for instance, the individual with the cash  
11:00:36 15 could be the trainer, but the owner was going to be a different  
11:00:41 16 person, and so, sometimes a trainer would be given cash to  
11:00:46 17 purchase on behalf of their owner. And that's how the paperwork  
11:00:49 18 would be filled out.

11:00:51 19 Q. And who was responsible for supplying that information?  
11:00:55 20 Were there cashiers at Heritage Place or the --

11:00:57 21 A. They would ask for the information and we would get as much  
11:01:02 22 of that information as we could, but a lot of times, we weren't  
11:01:06 23 able to get a tax payer number because it wasn't known.

11:01:14 24 Q. And part III, what does that reflect?

11:01:20 25 A. It asks for the date the cash received, which I would put

11:01:22 1 the last day of the sale as the date. The total of the cash  
11:01:29 2 amount because sometimes people, if they're buying multiple  
11:01:34 3 horses, they might pay part cash, part check. So this would be  
11:01:37 4 just for the cash portion, and then, it just wants to know if it  
11:01:44 5 was received in more than one payment. And like if the total  
11:01:54 6 purchases were more than the cash received, then that would be  
11:01:58 7 the amount in box 31.

11:02:01 8 Q. So let me jump ahead to that. On this form there's another  
11:02:06 9 part of the form and then, there's a series of instructions. I  
11:02:10 10 went ahead and highlighted the general instructions.

11:02:27 11 So you mentioned something about multiple transactions  
11:02:32 12 that you would then follow the form, even if there was less than  
11:02:37 13 \$10,000. Is that your previous testimony?

11:02:41 14 A. That would be in the case of multiple payments by cashier's  
11:02:45 15 checks or money orders.

11:02:47 16 Q. Could you describe how you could tell at the auction house?

11:02:51 17 A. If somebody had a cashier's check for \$25,000, that would  
11:02:55 18 not trigger this form because they would have filled out the form  
11:03:02 19 at the bank. If there were multiple, like I say, 3 to \$5,000  
11:03:10 20 cashier's checks and they total more than \$10,000, then those  
11:03:13 21 multiple instruments would be reported on here. The total amount  
11:03:16 22 would still be over 10,000.

11:03:19 23 Q. If I were to give you an example, I buy one horse for  
11:03:24 24 \$8,000, I buy another horse for \$7,000, and I buy a third horse  
11:03:29 25 for \$5,000, therefore, there's 20,000 total, you fill out one of

11:03:32 1 these Form 8300s?

11:03:34 2 A. Depends. If you only paid \$8,000 cash and you wrote a check  
11:03:37 3 for the other two, no. If all three of them were cash, yes.

11:03:40 4 Q. Yes. Yes. Thank you.

11:03:42 5 What bank does Heritage Place use?

11:03:44 6 A. They use two. They have MidFirst Bank and Bank of America.

11:03:47 7 Q. And is MidFirst Bank a local Oklahoma City bank?

11:03:52 8 A. Yes.

11:03:53 9 Q. And Bank of America is obviously nationwide.

11:03:57 10 A. Yes.

11:03:57 11 Q. Why does Heritage Place have the Bank of America account?

11:04:01 12 A. They had Bank of America first. They got rid of all the  
11:04:05 13 accounts except for one account that they decided to keep because  
11:04:12 14 of customers that live throughout the -- probably mostly southern  
11:04:19 15 United States could make deposits into the Bank of America  
11:04:25 16 account. They would ask for our account number, and then, they  
11:04:30 17 could go into the bank and make a deposit directly into the bank  
11:04:36 18 account.

11:04:37 19 Q. And what kind of deposits do you generally see into that  
11:04:40 20 Bank of America account?

11:04:44 21 A. They would be to pay for the balance on horses. I could  
11:04:51 22 never identify based on the online account or anything from the  
11:04:56 23 bank where the cash or check -- I wouldn't know if it was a cash  
11:05:02 24 or check or what form of money came into the Bank of America  
11:05:07 25 account. Someone would have to notify me that they had made a

11:05:13 1 deposit on what date, and how much, and how they wanted it to be  
11:05:16 2 applied.

11:05:21 3 Q. On that note, I'd like to go through one of these auctions  
11:05:24 4 with you. Talking about that.

11:05:30 5 This is the Heritage Place 2012 winter mixed sale; is  
11:05:38 6 that correct?

11:05:38 7 A. Yes.

11:05:39 8 Q. Though I haven't marked it yet, I'm just putting up my note  
11:05:43 9 page again. That's one of the three, the first one of the year?

11:05:49 10 A. Yes.

11:05:50 11 Q. So talking about this particular document here, what is this  
11:06:04 12 here, Ms. Eckert?

11:06:06 13 A. That is the statement of account. Every person who either  
11:06:10 14 buys or sells a horse will have a statement like that showing  
11:06:15 15 each hip number, horse number, the amount paid, and if they're  
11:06:20 16 the seller, then they would have commissions and registration  
11:06:24 17 fees.

11:06:24 18 Q. For this particular horse that was sold whose name is Mr.  
11:06:27 19 Perrys Wine?

11:06:27 20 A. Yes.

11:06:28 21 Q. All right. And Mr. Perrys Wine was present on the Heritage  
11:06:34 22 Place auction ground on January 19th?

11:06:36 23 A. Yes.

11:06:39 24 Q. And who was listed as the purchaser of that horse?

11:06:43 25 A. Robert Marquez.

11:06:44 1 Q. And was this what you're talking about earlier when there  
11:06:47 2 was no addresses or other contact information?

11:06:51 3 A. Right.

11:06:51 4 Q. On the purchaser?

11:06:53 5 A. Right.

11:06:54 6 Q. And do you know -- did you write this notation down here,  
11:06:57 7 Fernando Carlito?

11:06:58 8 A. That is Jeff Tebow's handwriting. He's general manager.

11:07:01 9 Q. And then, the jury has also heard about a horse called  
11:07:06 10 Katies Sign. Was Katies Sign also present on January 19th of  
11:07:12 11 2012 of that auction?

11:07:13 12 A. Yes.

11:07:14 13 Q. Do you know this person Alejandro Lagunes?

11:07:17 14 A. Not by sight.

11:07:19 15 Q. Have you heard of or what -- let me ask you this. Did he  
11:07:25 16 also go by Alejandro Barradas?

11:07:27 17 A. I have no idea. I've heard that name.

11:07:31 18 Q. And who do you associate that name with?

11:07:35 19 A. I believe Azoom.

11:07:39 20 Q. Azoom is another company?

11:07:40 21 A. Yes.

11:07:41 22 Q. I'm just going to go through these a little bit. And now,  
11:07:48 23 what is this document here?

11:07:50 24 A. That is a notification that was e-mailed to me by MidFirst  
11:07:58 25 Bank. It shows the account that it went into and the amount,

11:08:12 1 228,700.

11:08:13 2 Q. Okay. And when you say the account it went into, I'm  
11:08:15 3 highlighting here, that's the Heritage Place winter mixed sale?

11:08:18 4 A. Yes.

11:08:18 5 Q. So this is a payment for the first two horses or number of  
11:08:24 6 horses that were in the previous page, correct?

11:08:29 7 A. Yes. I actually applied that to three accounts based on my  
11:08:32 8 notes.

11:08:33 9 Q. And, your Honor, just for the record, I apologize, that's  
11:08:36 10 Bates No. 13. And the first number in that sequence on  
11:08:41 11 Government's Exhibit 230L is 1689.

11:08:47 12 How much is this wire for?

11:08:51 13 A. \$228,700.

11:08:55 14 Q. I believe you testified earlier, this here, ADT Petro  
11:09:00 15 Servicios, is that the individual who's paying for it?

11:09:02 16 A. Yes. That's the money came from a bank in Mexico.

11:09:10 17 Q. And that's bank Monex, correct, above it?

11:09:21 18 A. Yes.

11:09:23 19 Q. Is that your writing, Ms. Eckert?

11:09:38 20 A. Yes.

11:09:39 21 Q. And what does that reflect?

11:09:40 22 A. Those payments listed above, that's how I was told to apply  
11:09:48 23 the money that was received.

11:09:50 24 Q. To that particular set of auction purchases?

11:09:54 25 A. Yes. March payment would have been for January.

11:10:03 1 Q. And, again, is this the same thing with these three  
11:10:07 2 individuals, Ray Gonzales, Ismael Para, and Salvador -- and I  
11:10:13 3 apologize, I can't pronounce that last name.  
11:10:14 4 A. Roshan. Yes.  
11:10:17 5 Q. And did they pay the \$9,900 to your auction house, or was  
11:10:22 6 this, again, money that was wired into or deposited into the Bank  
11:10:26 7 of America account?  
11:10:27 8 A. That's the Bank of America account. So it wasn't wired  
11:10:31 9 because wires from Bank of America looked different. And  
11:10:36 10 normally I can identify those on my own without assistance.  
11:10:42 11 Q. If I zoom in on this, says commercial deposit, commercial  
11:10:48 12 deposit, \$9,900 and \$9,900, correct?  
11:10:51 13 A. Yes.  
11:11:04 14 Q. Now, here you have writing that says, Fernando Garcia  
11:11:08 15 e-mail?  
11:11:09 16 MR. WOMACK: Your Honor, I'm sorry, if we could ask for  
11:11:11 17 the Bates number for this.  
11:11:13 18 MR. GARDNER: Absolutely. 133638.  
11:11:16 19 MR. WOMACK: I'm sorry 13.  
11:11:18 20 MR. GARDNER: 3638. I apologize.  
11:11:20 21 Q. (BY MR. GARDNER) Is this your writing, Ms. Eckert?  
11:11:23 22 A. Yes.  
11:11:24 23 Q. And so, what did he e-mail you?  
11:11:26 24 A. The receipts from Bank of America to prove that he was the  
11:11:31 25 one who sent the money to our account.



11:11:35 1 Q. And is this the same balance in which the ADT Petro

11:11:42 2 Servicios was applied to?

11:11:44 3 A. Yes.

11:11:49 4 Q. Again, the date of this deposit for the record is 2-28-12

11:11:58 5 and how much, Ms. Eckert?

11:12:00 6 A. \$9,900.

11:12:02 7 Q. And the date of this deposit is 2-28-12 and, again, how much

11:12:07 8 is that deposit?

11:12:07 9 A. \$9,900.

11:12:10 10 Q. And the date of this deposit is?

11:12:14 11 A. 3-1 for \$4,900.

11:12:18 12 Q. And for 4,900 and the date of this deposit?

11:12:22 13 A. 2-29.

11:12:24 14 Q. And for the amount of?

11:12:26 15 A. 1,700.

11:12:28 16 Q. And the date of this deposit?

11:12:30 17 A. 2-28.

11:12:32 18 Q. And for the amount of?

11:12:33 19 A. \$9,900.

11:12:34 20 Q. Your Honor, for the record, that's the next page 13-3636.

11:12:40 21 Turn to 3637. And the date of this one, Ms. Eckert?

11:12:47 22 A. 3-1.

11:12:50 23 Q. And the amount?

11:12:52 24 A. 9,900.

11:12:52 25 Q. The date of the next one?

11:12:54 1 A. 3-1.

11:12:55 2 Q. And the amount?

11:12:55 3 A. 5,000.

11:12:57 4 Q. And these deposits of all less than \$10,000, those were

11:13:01 5 applied to the account for this particular purchase, correct?

11:13:05 6 A. Right. For the group.

11:13:06 7 Q. For the group of horses. There's more than one horse here.

11:13:08 8 A. Correct.

11:13:09 9 Q. And do you know who bought Mr. Perrys Wine?

11:13:16 10 A. According to the notes that I received, Fernando and Carlos.

11:13:25 11 Q. Do you know who bought --

11:13:26 12 A. Or they're responsible for the payment of.

11:13:28 13 Q. Responsible for payment of. Not necessarily listed as the

11:13:31 14 owners, correct?

11:13:32 15 A. Right.

11:13:32 16 Q. And do you know same thing for Katies Sign?

11:13:35 17 A. Right. I would have been given a list.

11:13:38 18 Q. And do you know where Katies Sign and Mr. Perrys Wine

11:13:43 19 eventually ended up?

11:13:43 20 A. No.

11:13:44 21 Q. Okay. You talked earlier about a horse called Dashin

11:13:51 22 Follies, so I'm showing you Government's Exhibit 230F. Bates

11:13:56 23 stamp 13-1506. And, again, you said Tyler Graham is the acting

11:14:06 24 agent on this sale?

11:14:07 25 A. Yes.

11:14:08 1 Q. And you have one, two, three, four horses listed on this  
11:14:13 2 front page?

11:14:13 3 A. Yes.

11:14:14 4 Q. Okay. What's the significance of that in terms of this  
11:14:17 5 document?

11:14:18 6 A. Well, Dashin Follies at the time was the record-selling  
11:14:29 7 brood mare for quarter horse at auction. That was a real big  
11:14:37 8 deal.

11:14:37 9 Q. In the history of your auction house?

11:14:40 10 A. Well, we had sold -- well, as far as brood mare, yes. I  
11:14:43 11 mean, I think not just our place. I mean, brood mares don't  
11:14:49 12 normally go, I guess, for that much. I don't know that much  
11:14:54 13 about horses.

11:14:54 14 Q. Were these four horses all bought in one group?

11:14:56 15 A. Yes.

11:14:57 16 Q. Tyler Graham was, in fact, the agent?

11:15:02 17 A. Yes.

11:15:02 18 Q. Now, can you tell the ladies and gentlemen of the jury how  
11:15:13 19 this was paid for?

11:15:15 20 A. Each of those line items has the date and that it was a wire  
11:15:20 21 and that the wire was received from Grupo Aduanero, and they were  
11:15:27 22 different amounts on different days.

11:15:29 23 Q. Now, do you recall --

11:15:33 24 A. It's like ten payments.

11:15:36 25 Q. Ten payments. The amount is \$935,000 total; is that

11:15:43 1 correct?

11:15:43 2 A. Yes.

11:15:44 3 Q. Do you recall a \$100,000 cash deposit for the sale of this

11:15:48 4 horse to Heritage Place?

11:15:49 5 A. Yes.

11:15:51 6 Q. Who made that cash deposit?

11:15:54 7 A. Tyler Graham brought the money to me and I made the deposit.

11:15:59 8 Q. So the money was all U.S. currency?

11:16:02 9 A. Yes.

11:16:02 10 Q. And do you recall the denominations of the bills?

11:16:05 11 A. No.

11:16:07 12 Q. Did you fill out this form, Government's Exhibit 403, a Form

11:16:21 13 8300?

11:16:23 14 A. Yes.

11:16:24 15 Q. For the cash?

11:16:25 16 A. Yes.

11:16:26 17 Q. Did you list Tyler Graham as the person in Part I?

11:16:32 18 A. Yes.

11:16:32 19 Q. And do you recall who you listed in Part II?

11:16:36 20 A. I know I did not have a Social Security number. I believe

11:16:42 21 it was Luis Aguirre.

11:16:56 22 Q. I want to go through at least one more sale with you. This

11:17:03 23 is Government's Exhibit 230K, Bates 133483. And what's this

11:17:25 24 particular document show, Ms. Eckert?

11:17:29 25 A. That company sold four horses in the fall mixed sale 2011.

11:17:39 1 It shows --

11:17:39 2 Q. I'm sorry.

11:17:40 3 A. It shows hip number, name of the horses, the price each  
11:17:44 4 horse bought, the commission and registration fee that Heritage  
11:17:50 5 Place collected, and the net is the amount that the owner would  
11:17:54 6 have received by check.

11:17:56 7 Q. So in this case, it's Tremor Enterprises who sold these  
11:17:59 8 horses?

11:17:59 9 A. Yes.

11:18:00 10 Q. And these are the four horses, including Blues Girls Choice  
11:18:04 11 they sold?

11:18:04 12 A. Yes.

11:18:05 13 Q. And the amounts over here. So Blues Girls Choice, for  
11:18:09 14 example, it was sold for how much?

11:18:11 15 A. \$102,000.

11:18:13 16 Q. Other horses are Number One Cartel and Forty Force?

11:18:17 17 A. Yes.

11:18:20 18 Q. Generally what type of horses do you see at the fall mixed  
11:18:23 19 sale?

11:18:23 20 A. The fall mixed sale usually has fewer horses entered. It's  
11:18:31 21 usually on a two-day sale, instead of a three-day sale, and the  
11:18:37 22 quality is usually a little less.

11:18:42 23 Q. Why is that?

11:18:45 24 A. I was told that the fall sale was when people culled the  
11:18:52 25 herd of the horses that they didn't want to feed during the

11:18:56 1 winter.

11:18:56 2 Q. And have you, upon my request, looked at other fall mixed  
11:19:02 3 sales?

11:19:02 4 A. Yes.

11:19:02 5 Q. And what was the general price for the highest sale at those  
11:19:08 6 sales?

11:19:09 7 A. I went back and looked at -- and this is online at  
11:19:14 8 heritageplace.com. The top seller for the fall mixed sale for  
11:19:19 9 2008, which was the first year when I came back, the high seller  
11:19:24 10 at that time was \$60,000.

11:19:26 11 Q. And so, did this particular auction with the horses listed  
11:19:29 12 by Tremor Enterprises bring it to your attention?

11:19:35 13 A. In the fall sale when a horse brings over \$100,000, it's  
11:19:39 14 very exciting. It's noticeable.

11:19:41 15 Q. When you say top seller, so does this top seller combine all  
11:19:47 16 of the amounts together for a total that we're talking about?

11:19:49 17 A. No. That's \$60,000 for single horse was the top seller in.

11:19:54 18 Q. 2008?

11:19:56 19 A. The other sale.

11:19:56 20 Q. In this case, we have --

11:19:58 21 A. The 280 was the top seller in that sale.

11:20:02 22 Q. Does Heritage Place give out some sort of trophy for that?

11:20:05 23 A. They have. They haven't always done it, but I think it's  
11:20:08 24 something that they started more recently.

11:20:11 25 Q. And who do they give that to?

11:20:13 1 A. The seller.

11:20:16 2 Q. So in this case, had they given a trophy, it would have  
11:20:20 3 been?

11:20:20 4 A. To Tremor Enterprises.

11:20:21 5 Q. Now, do you know who owns Tremor Enterprises?

11:20:27 6 A. Jose Trevino.

11:20:28 7 Q. Do you see Mr. Trevino here in the courtroom today?

11:20:31 8 A. Yes.

11:20:32 9 Q. Could you point him? He just stood up?

11:20:35 10 A. Yes.

11:20:35 11 Q. Have you met Mr. Trevino before?

11:20:37 12 A. In my office, yes.

11:20:39 13 Q. And what conversations have you had with Jose Trevino?

11:20:45 14 A. Mostly, I spoke to him shortly after this sale happened. I  
11:20:54 15 was about to write the checks, so I knew that he was getting the  
11:20:59 16 largest check for that particular sale, and I congratulated him  
11:21:05 17 on that. And we just -- it was a very friendly conversation  
11:21:13 18 about his future plans to expand his business, and he had just  
11:21:21 19 purchased a ranch just south of Oklahoma City. He was very proud  
11:21:28 20 and excited about that.

11:21:29 21 Q. Nothing out of the ordinary?

11:21:31 22 A. No.

11:21:32 23 Q. The jury's heard some evidence that Ramiro Villarreal  
11:21:37 24 previously owned Blues Girls Choice. Did you and Mr. Jose  
11:21:40 25 Trevino have a discussion of how he acquired that horse prior to

11:21:43 1 him selling it?

11:21:44 2 A. No.

11:21:45 3 Q. May I have one moment, your Honor?

11:21:58 4 THE COURT: Yes, ma'am.

11:22:04 5 MR. GARDNER: Your Honor, I'll pass the witness.

11:22:06 6 CROSS-EXAMINATION

11:22:06 7 BY MR. FINN:

11:22:09 8 Q. May it please the Court, members of the jury.

11:22:11 9 Ms. Eckert, my name is David Finn, F-I-N-N. I don't  
11:22:14 10 believe we've ever met, have we?

11:22:16 11 A. No.

11:22:16 12 Q. Haven't spoken on the phone?

11:22:18 13 A. No.

11:22:18 14 Q. No conversations, okay. And you're from -- where are you  
11:22:22 15 living, Oklahoma?

11:22:22 16 A. Yes.

11:22:23 17 Q. Okay. Have you ever seen that Southwest Airlines ad, want  
11:22:28 18 to get away?

11:22:28 19 A. That's how I flew down here.

11:22:30 20 Q. Oh, congratulations. All right. Let me ask just a couple  
11:22:34 21 of questions.

11:22:34 22 When you were interacting with my client, Jose  
11:22:37 23 Trevino-Morales, I think you said you met him one time; is that  
11:22:41 24 right?

11:22:41 25 A. That I recall very clearly, yes.



11:22:42 1 Q. Okay. And he was courteous, polite, professional and it was  
11:22:46 2 just a standard professional conversation, correct?

11:22:49 3 A. Yes.

11:22:50 4 Q. And he treated you with respect and you treated him with  
11:22:53 5 respect?

11:22:53 6 A. Yes.

11:22:54 7 Q. Accurate?

11:22:54 8 A. Yes.

11:22:55 9 Q. Now, you mentioned the name on direct examination of Tyler  
11:23:03 10 Graham. Do you remember that?

11:23:03 11 A. Yes.

11:23:05 12 Q. Tell the members of the jury who Tyler Graham is, please.

11:23:09 13 A. Tyler Graham is the grandson of one of the owners, Charlie  
11:23:14 14 Graham.

11:23:14 15 Q. Okay. So we've got Charlie Graham, one of the owners of the  
11:23:18 16 auction; is that correct?

11:23:19 17 A. Yes.

11:23:20 18 Q. And then, Charlie's got a son named David, right?

11:23:23 19 A. Yes.

11:23:23 20 Q. And then, David has a son named Tyler, correct?

11:23:26 21 A. Correct.

11:23:27 22 Q. And Tyler is a broker, right?

11:23:30 23 A. Yes. Agent.

11:23:32 24 Q. An agent and he's been in the horse industry for a number of  
11:23:36 25 years, just like granddad, correct?

11:23:38 1 A. Learning the business.

11:23:39 2 Q. Learning the business. How old is Tyler Graham, if you  
11:23:44 3 know, approximately?

11:23:45 4 A. He's around 30.

11:23:47 5 Q. Around 30 years old?

11:23:49 6 A. Yes.

11:23:49 7 Q. Is he really, really tight with granddad Charles Graham?

11:23:54 8 A. Seems to be.

11:23:56 9 Q. I mean, they've got, as far as you know, a really good  
11:23:59 10 relationship, correct?

11:24:00 11 A. Yes.

11:24:01 12 Q. And Charlie Graham or Charles Graham, Dr. Graham, he's a  
11:24:06 13 doctor of veterinary medicine; is that right?

11:24:09 14 A. Yes.

11:24:09 15 Q. Did you know that early when Jose Trevino-Morales, my  
11:24:14 16 client, was getting into the horse business, that Dr. Graham more  
11:24:19 17 or less tutored or taught Jose about horses and breeding and  
11:24:24 18 things like that? They had sort of a mentor-mentee relationship?  
11:24:28 19 Were you aware of that?

11:24:29 20 A. No.

11:24:30 21 Q. Now, you're not -- Dr. Graham has been very, very successful  
11:24:39 22 over the years in the horse business, correct?

11:24:42 23 A. Yes.

11:24:44 24 Q. I mean, not just in the horse business but with investments.  
11:24:48 25 He's pretty well off, isn't he?

11:24:49 1 A. Seems to be.

11:24:53 2 Q. And does he seem to be fairly connected to politicians,  
11:24:57 3 elected officials, people that are in powers of position?

11:25:02 4 A. I don't know.

11:25:03 5 Q. Okay. What do you know about this -- well, if Tyler Graham  
11:25:10 6 came to you and made deposits of cash of \$9,900, \$9,900, \$9,900,  
11:25:22 7 \$9,900, \$9,900, would that trigger the reporting requirement that  
11:25:29 8 you testified about earlier?

11:25:31 9 A. Yes.

11:25:34 10 Q. And why would it be important to record -- even though it's  
11:25:37 11 not the \$10,000 magic number, why would it be important to record  
11:25:42 12 those kinds of cash transactions?

11:25:45 13 A. They're related transactions.

11:25:48 14 Q. The related transactions?

11:25:50 15 A. Yes.

11:25:51 16 Q. Yeah, because, otherwise, somebody could try to get away  
11:25:54 17 with structuring, right? You're familiar with that term?

11:25:57 18 A. Yes.

11:25:58 19 Q. I'm sorry?

11:25:58 20 A. Yes.

11:25:59 21 Q. So if somebody's trying to pull a fast one and get around  
11:26:03 22 the requirements, you're smart and savvy and experienced enough  
11:26:08 23 to know, uh, uh, uh, sorry, Charlie, not so fast, I'm going to  
11:26:14 24 report this, anyway, because you know what to look for, right?

11:26:17 25 A. Right.

11:26:21 1 Q. What is your if you have -- did you know that this grandson  
11:26:24 2 Tyler Graham was a government informant, a confidential  
11:26:27 3 informant?

11:26:27 4 A. No.

11:26:30 5 Q. Is that news to you?

11:26:33 6 A. Recent news, yes.

11:26:35 7 Q. Who did you find that out from, the government?

11:26:42 8 A. I think I may have heard it from the general manager at  
11:26:49 9 Heritage Place.

11:26:50 10 Q. Heritage Place. Where his granddad is one of the owners?

11:26:53 11 A. Yes.

11:26:54 12 Q. Is this grandson?

11:27:00 13 A. This would have been after the subpoena of records.

11:27:02 14 Q. Okay. Did you ever have occasion where you caught Tyler  
11:27:09 15 Graham, the grandson of the owner of your former employer,  
11:27:15 16 telling a fib?

11:27:19 17 A. About -- nothing comes to mind.

11:27:24 18 Q. Fair enough. Pass the witness.

11:27:29 19 MR. DEGEURIN: No questions.

11:27:31 20 MR. WOMACK: Your Honor, I have some.

11:27:32 21 MR. MAYR: Judge, may we approach before he begins his  
11:27:35 22 cross-examination?

11:27:41 23 (At the bench, on the record.)

11:27:53 24 MR. MAYR: Now, my client -- and I've kind of confirmed  
11:27:56 25 with my verbal thought with Mr. DeGeurin's client is indicating

11:27:58 1 that the interpreter is having trouble keeping up with Mr. --  
11:28:02 2 that with Mr. Finn's very deliberate pace. She's still having  
11:28:06 3 very much difficulty keeping up with the translations. So what  
11:28:11 4 will -- and I actually listened to it, Judge, and what's  
11:28:13 5 happening is she -- she'll start translating and then, she'll  
11:28:19 6 stop in mid-sentence when the next question is asked and not  
11:28:23 7 finish with any of the translations. Does that make sense?

11:28:26 8 THE COURT: Uh-huh. What's happening is that she's  
11:28:31 9 running across a word that she has to think to interpret and she  
11:28:36 10 gets behind.

11:28:37 11 MR. MAYR: Yeah.

11:28:38 12 THE COURT: Okay.

11:28:40 13 MR. MAYR: I'm sorry, Judge.

11:28:41 14 MR. WOMACK: I'm trying to go slow.

11:28:43 15 MR. MAYR: I want to make sure everyone is hearing.

11:28:47 16 MR. DEGEURIN: It's pretty bad, I understand.

11:28:49 17 THE COURT: Okay.

11:28:51 18 MR. WOMACK: If we could get the interpreter -- they  
11:28:53 19 could bring another interpreter that's faster. She's a legal  
11:28:57 20 assistant, that's the problem.

11:28:59 21 THE COURT: She's okayed with San Antonio.

11:29:08 22 MR. MAYR: That's my concern is I was listening and Mr.  
11:29:10 23 Finn was very slow and deliberate, and the witness is not  
11:29:14 24 answering really fast.

11:29:16 25 THE COURT: The lady was fast.

11:29:18 1 MR. MAYR: Oh.

11:29:20 2 THE COURT: Yeah. But we'll do what I can.

11:29:25 3 Peter.

11:29:27 4 THE INTERPRETER: Yes, your Honor.

11:29:27 5 THE COURT: Everybody is complaining about not getting  
11:29:32 6 complete answers.

11:29:42 7 THE INTERPRETER: Sorry, your Honor. Sorry?

11:29:44 8 THE COURT: I said we have multiple complaints that  
11:29:47 9 we're not getting complete answers by the interpreter because  
11:29:51 10 she'll be going along and then, there will be a slight pause and  
11:29:56 11 then, she gets into the next question. Now, the last witness was  
11:30:02 12 rather fast. But what I want you to do is to take over, and  
11:30:08 13 we'll run it one more hour.

11:30:10 14 THE INTERPRETER: We can go till 1:00, Judge.

11:30:13 15 THE COURT: All right.

11:30:14 16 THE INTERPRETER: As a matter of fact, I just handed it  
11:30:16 17 over. Just -- it's been like a couple of questions.

11:30:19 18 MR. MAYR: Right.

11:30:20 19 THE INTERPRETER: And I've just taken it back again  
11:30:21 20 because I kinda realized what's going on. So yeah, it's  
11:30:24 21 something we need to work out.

11:30:26 22 THE COURT: Okay. Thank you.

11:30:27 23 MR. MAYR: Thanks.

11:30:51 24 THE COURT: You may proceed, sir.

11:30:53 25

CROSS-EXAMINATION

BY MR. WOMACK:

Q. Ms. Eckert, I'm Guy Womack. I'm from Houston. We've never met before, have we?

A. No.

Q. Got several questions to ask you. First of all, you told us that Heritage Place has a small office?

A. Yes.

Q. But you know that you're one of the great horse sales?

A. Yes.

Q. In fact, your motto is on your letterhead, where champions are sold?

A. Yes.

Q. And you know that happens to be true?

A. Yes.

Q. Now, you told us that you have sales in January, September and October?

A. Yes.

Q. The September sale is the yearling sale?

A. Yes.

Q. Those are horses that are -- the way they compute ages, those horses are one year old?

A. Yes.

Q. And that's where the high quality -- the highest quality of horses are sold?

11:31:39 1 A. Yes.

11:31:40 2 Q. And that's where the biggest money is spent?

11:31:42 3 A. Yes.

11:31:43 4 Q. Okay. Now, y'all that work at Heritage remember the names

11:31:57 5 of some of the more significant sales, don't you?

11:31:59 6 A. Yes.

11:32:01 7 Q. How about a horse by the name of A Dash Of Sweet Heat? Do

11:32:06 8 you remember that horse selling this fall?

11:32:08 9 A. I wasn't there.

11:32:10 10 Q. Have you heard that y'all sold it for \$1 million?

11:32:14 11 A. Yes. I did hear that.

11:32:15 12 Q. Even though you weren't there, you heard about that?

11:32:17 13 A. Yes. I didn't work there anymore. But yes, I did.

11:32:20 14 Q. Okay. Now, you told us that some sales, like the mixed

11:32:32 15 sales in January or in October, whenever it was, those may not

11:32:37 16 bring the highest prices; is that right?

11:32:39 17 A. Right.

11:32:41 18 Q. But you're not suggesting to the jury that anyone paid too

11:32:44 19 much for a horse, are you?

11:32:46 20 A. I wouldn't have any clue. I don't know horses.

11:32:50 21 Q. Sometimes you may buy a horse for a price and find out you

11:32:54 22 paid too much because it doesn't perform?

11:32:57 23 A. It's all a gamble.

11:32:58 24 Q. Yeah. And sometimes you buy a horse like A Dash Of Sweet

11:33:05 25 Heat for hundreds of thousands and then, later, sell it for a



11:33:09 1 million dollars, and that might be a bargain for that buyer?

11:33:12 2 A. Right.

11:33:13 3 Q. They paid a million dollars might be a bargain, right?

11:33:15 4 A. Could be.

11:33:16 5 Q. We won't know until we see how the horse -- how much it

11:33:19 6 produces over the long haul?

11:33:20 7 A. Right.

11:33:21 8 Q. Okay. So you're not in any way suggesting that horses are

11:33:25 9 being bought too expensively or too cheaply. You're not saying

11:33:30 10 that?

11:33:30 11 A. I wouldn't have any idea. I'm not that type of expert.

11:33:35 12 Q. It would be up to the people actually paying the money to

11:33:37 13 make that decision?

11:33:38 14 A. Correct.

11:33:42 15 Q. Now, you said that Ramiro Villarreal, you knew he would come

11:33:47 16 in and buy horses, and he usually bought the higher dollar

11:33:52 17 horses, didn't he?

11:33:52 18 A. Frequently.

11:33:54 19 Q. And you also said that you -- you said he bought, but

11:34:00 20 actually, you consider him more of an agent; is that right?

11:34:03 21 A. I believe the horses he purchased went into other people's

11:34:05 22 names, not his own name.

11:34:08 23 Q. And from your experience at Heritage, you know that was

11:34:10 24 actually very common?

11:34:10 25 A. Right.

11:34:11 1 Q. That a buyer would have an agent go down -- or a number of  
11:34:14 2 buyers may have an agent buy horses for all of them?

11:34:17 3 A. Correct.

11:34:17 4 Q. Fernando Garcia, you know he did that?

11:34:22 5 A. Correct.

11:34:23 6 Q. He would buy horses for different companies or different  
11:34:26 7 buyers, but he would be the man physically coming to Heritage,  
11:34:31 8 quote, as the buyer, correct?

11:34:32 9 A. Correct.

11:34:33 10 Q. But if you then looked at the certificates where the horses  
11:34:38 11 were registered with the American Quarter Horse Association, of  
11:34:40 12 course, they have to be for racing, then you could find out who  
11:34:44 13 the real owner was, correct?

11:34:46 14 A. Right.

11:34:46 15 Q. Okay. Did you ever actually go to an auction?

11:34:57 16 A. I was present in the back room.

11:35:00 17 Q. Okay. And on some of the really big horses, they would be  
11:35:06 18 pretty exciting to watch, wouldn't it?

11:35:07 19 A. Yes.

11:35:07 20 Q. Because the numbers were going up astronomically every time  
11:35:11 21 someone raised their hand?

11:35:12 22 A. Yes.

11:35:12 23 Q. And did you notice that sometimes because you did the  
11:35:18 24 paperwork, sometimes the bidders were like unknown people?

11:35:22 25 A. Yes.

11:35:23 1 Q. And then, you find out later doing the paperwork that the  
11:35:27 2 buyer was somebody else that wasn't raising his hand?

11:35:29 3 A. Yes.

11:35:30 4 Q. Okay. And that was common?

11:35:31 5 A. Yes.

11:35:33 6 Q. You mentioned you saw Fernando -- he went to most of your  
11:35:50 7 actions while you were there, didn't he?

11:35:54 8 A. I first noticed him after the 2010. I mean, he could have  
11:36:01 9 been -- I'm in the back office.

11:36:02 10 Q. I understand. If I took -- well, but if he bought a horse,  
11:36:05 11 you would see him because he'd come by your office, wouldn't he?

11:36:08 12 A. Not necessarily. During auction, there are eight cashiers  
11:36:15 13 and that's who they would speak to first.

11:36:18 14 Q. If I told you that he wasn't at the January 2010 auction,  
11:36:23 15 could that be true? January of 2010.

11:36:27 16 A. I wouldn't have any idea.

11:36:29 17 Q. Okay. So you're not saying he was at every auction. You  
11:36:32 18 know he came to some?

11:36:33 19 A. Right.

11:36:37 20 Q. The Form 8300 that the government put on the screen, did you  
11:36:49 21 notice that that was the newest version of that form?

11:36:52 22 A. I didn't notice it looked any different.

11:36:56 23 Q. At the top right corner, it says, revised July 2012. Are  
11:37:01 24 you aware that the forms have changed?

11:37:06 25 A. No, because I don't do that anymore.

11:37:11 1 Q. When did you quit doing Form 8300s?

11:37:14 2 A. When I quit Heritage Place.

11:37:16 3 Q. Which is?

11:37:18 4 A. I gave my notice in February of 2012. So I finished up all  
11:37:25 5 paperwork on January 2012 sale as part of my exit. So yeah,  
11:37:35 6 sometime a year ago. So where I'm at now, it's not necessary.

11:37:39 7 Q. So you wouldn't know how they changed, how the form has  
11:37:42 8 changed?

11:37:43 9 A. I wouldn't have looked at it recently because I wouldn't  
11:37:46 10 have cause to.

11:37:46 11 Q. Most of it, didn't know it had changed. It's an accident  
11:37:49 12 that anybody knows, but you're not aware of the changes?

11:37:50 13 A. No.

11:37:51 14 Q. Okay.

11:37:51 15 A. I don't know what the changes would be.

11:37:52 16 Q. Now, if a buyer or an agent bought multiple horses at an  
11:38:01 17 auction, isn't it common for them to make separate payments for  
11:38:07 18 each horse just for accounting purposes?

11:38:11 19 A. They do it all different ways. I've seen so many different  
11:38:16 20 combinations, I couldn't even begin to tell you.

11:38:20 21 Q. Let's say they're paying you with wire transfers. Isn't it  
11:38:26 22 common if a person bought multiple horses that they would send  
11:38:29 23 you a wire transfer for each horse?

11:38:31 24 A. It could be. Yes.

11:38:33 25 Q. And that could be for accounting purposes for them?

11:38:35 1 A. It could be. Yes.

11:38:36 2 Q. So they'd know how much they could account for: I spent  
11:38:39 3 this much money for this horse alone?

11:38:42 4 A. Right.

11:38:42 5 Q. And this much money went for that horse alone?

11:38:44 6 A. Right.

11:38:44 7 Q. And that wouldn't surprise you at all?

11:38:47 8 A. No.

11:38:48 9 Q. Okay. If a horse is -- or horses are paid for by a buyer by  
11:39:02 10 wire transfer, you don't do a Form 8300, do you?

11:39:07 11 A. No.

11:39:08 12 Q. The 8300, this transaction report would be filled out --  
11:39:14 13 actually, the bank would fill out their own currency transaction  
11:39:16 14 report?

11:39:17 15 A. Right. Correct.

11:39:18 16 Q. So, in other words, when you got wire transfers to pay for  
11:39:24 17 horses, what you get is the actual money wired from a bank to  
11:39:29 18 your bank?

11:39:29 19 A. Correct.

11:39:31 20 Q. And you wouldn't know where the money came from or how it  
11:39:35 21 was deposited in that paying bank. You would just know a wire  
11:39:39 22 from that bank came to your bank?

11:39:41 23 A. Correct.

11:39:41 24 Q. There was a government exhibit, it was like 1336, 37, if I  
11:39:49 25 can --

11:39:52 1 MR. GARDNER: I'm sorry. Which one do you want?

11:39:55 2 MR. WOMACK: 1336, 37, 38, something like that. It's a  
11:39:59 3 series.

11:40:29 4 Q. (BY MR. WOMACK) Okay. This thing is on. You see where it  
11:40:35 5 says, Fernando Garcia e-mail?

11:40:37 6 A. Yes.

11:40:38 7 Q. Who wrote that?

11:40:39 8 A. Me.

11:40:40 9 Q. And explain to us what that means. What does that notation  
11:40:46 10 mean?

11:40:47 11 A. That means that I received an e-mail from Fernando and  
11:40:50 12 attached were either individual copies or those pages of copies  
11:40:56 13 of deposit slips.

11:40:57 14 Q. Okay. And so, what you received from Fernando -- this was a  
11:41:04 15 horse or horses where he was an agent for someone?

11:41:07 16 A. Correct.

11:41:08 17 Q. Okay. And these deposit slips, is that into Heritage's  
11:41:17 18 account or someone else's account?

11:41:18 19 A. Those are all into the Bank of America Heritage Place  
11:41:22 20 account.

11:41:22 21 Q. Okay. So the e-mail that you got from Fernando showed you  
11:41:29 22 deposit slips showing that someone had deposited sufficient money  
11:41:34 23 into Heritage's account to settle that debt?

11:41:37 24 A. Yes.

11:41:38 25 Q. Okay. It doesn't say who made the deposit?

11:41:41 1 A. No.

11:41:42 2 Q. You're not suggesting for a minute that Fernando Garcia made

11:41:46 3 these deposits?

11:41:47 4 A. I don't know who made the deposits. I was told how to apply

11:41:52 5 the payments.

11:41:53 6 Q. Right.

11:41:54 7 A. To which accounts.

11:41:54 8 Q. And so here, the agent for these buyers, or one buyer, or

11:41:58 9 however many it was, sent you an e-mail proving that some people

11:42:03 10 had made deposits that covered that debt.

11:42:06 11 A. Yes.

11:42:07 12 Q. And that's all it shows?

11:42:08 13 A. Yes.

11:42:08 14 Q. Okay. Now, notice on the -- and that was on the page we

11:42:24 15 were just looking at is 13-003638. Remember that. There will be

11:42:31 16 a test next week.

11:42:34 17 The front page of that exhibit is 13-001689 and I'm

11:42:41 18 kidding. Don't remember. It has the name Fernando and Carlito

11:42:48 19 written on it. Is that your writing?

11:42:50 20 A. No.

11:42:51 21 Q. Do you know who wrote that?

11:42:52 22 A. Jeff Tebow.

11:42:54 23 Q. Okay. And is he somebody that worked at Heritage?

11:42:56 24 A. He's the general manager. He was my boss.

11:42:58 25 Q. Okay. And this shows that Mr. Perrys Wine was bought for

11:43:07 1 \$132,000.

11:43:14 2 A. There was no commission to the buyer.

11:43:17 3 Q. Okay. So is Robert Marquez the buyer of the horse or the  
11:43:22 4 seller?

11:43:22 5 A. The buyer.

11:43:23 6 Q. Okay. So do you know why the name Fernando is written on  
11:43:29 7 there?

11:43:30 8 A. That would be Jeff's way of letting me know how to group  
11:43:39 9 multiple purchases that were under different names.

11:43:41 10 Q. Okay. And Fernando, do you think that would be Fernando  
11:43:46 11 Garcia?

11:43:46 12 A. Yes.

11:43:46 13 Q. Okay. Because, again, you know he was regularly assisting  
11:43:50 14 buyers at your auction?

11:43:51 15 A. Right.

11:43:52 16 Q. All right. Sir, I have no further questions.

11:44:17 17 THE COURT: Mr. Esper.

11:44:18 18 MR. ESPER: Yes, your Honor.

11:44:19 19 CROSS-EXAMINATION

11:44:19 20 BY MR. ESPER:

11:44:21 21 Q. Ms. Eckert, I believe you testified that on occasions, an  
11:44:27 22 owner or a purchaser of a horse, whether they were an owner,  
11:44:32 23 intentional owner or an agent, would often bring a trainer with  
11:44:36 24 them to assist them in purchasing a horse, correct?

11:44:40 25 A. Yes.



11:44:41 1 Q. Okay. And that was a common practice that occurred, did it  
11:44:44 2 not?

11:44:44 3 A. Yes.

11:44:44 4 Q. Okay. And have you ever seen this man before?

11:44:50 5 A. Not that I'm aware of.

11:44:51 6 Q. Okay. If I were to tell you he's a horse trainer, would  
11:44:56 7 that refresh your recollection of whether you've ever seen him at  
11:44:59 8 Heritage Place?

11:45:00 9 A. No. I'm in the back office.

11:45:02 10 Q. Okay. So you don't know him at all?

11:45:04 11 A. I don't see very many people.

11:45:06 12 Q. Okay. Whenever Mr. Fernando Garcia and Mr. Nayen came, this  
11:45:12 13 man wasn't with them, were they?

11:45:15 14 A. Not that I recall.

11:45:16 15 Q. That's all I have, your Honor.

11:45:18 16 MR. MAYR: I don't have any questions of the witness.

11:45:22 17 RE-DIRECT EXAMINATION

11:45:22 18 BY MR. GARDNER:

11:45:23 19 Q. Mr. Womack asked you about the sales and the payments. I  
11:45:30 20 have one quick question on Government's Exhibit 230L, page  
11:45:37 21 13-1689. Is that "Carlisto" that Mr. Womack said or Carlito?

11:45:45 22 A. Carlito.

11:45:45 23 Q. And who is Carlito?

11:45:46 24 A. Carlos.

11:45:47 25 Q. Carlos Nayen?

11:45:48 1 A. Yes.

11:45:48 2 Q. And are those two -- as your testimony earlier stated, they

11:45:52 3 were always together?

11:45:56 4 A. I'd occasionally see Fernando without Carlos, but I don't

11:45:59 5 think I ever saw Carlos without Fernando.

11:46:02 6 Q. What happens to the horses after the auction?

11:46:07 7 A. They're supposed to be out of the barn by Sunday at noon,

11:46:12 8 and where they go depends on the purchaser.

11:46:19 9 Q. So I'm showing you page 133385. Again, that's Blues Girls

11:46:30 10 Choice, correct?

11:46:30 11 A. Yes.

11:46:32 12 Q. This represents -- this top portion here represents what?

11:46:36 13 A. That is the consigner information. Those are printed out.

11:46:41 14 It's a three-part -- there's a white, a yellow and a green sheet.

11:46:47 15 The very top part that's printed by the computer, that's the --

11:46:52 16 because we know ahead of time which day it's going to sell on

11:46:55 17 according to the hip number. The name of the horse and the name

11:46:59 18 of the consigner, and then, everything else is filled out after

11:47:03 19 the purchase.

11:47:05 20 Q. Okay. So in this case, it's Blues Girls Choice consigned by

11:47:11 21 Tremor Enterprises?

11:47:11 22 A. Correct.

11:47:12 23 Q. And then, your testimony earlier was that's Jose Trevino's

11:47:15 24 company?

11:47:15 25 A. Yes.

11:47:16 1 Q. Okay. And here's the purchase price?

11:47:18 2 A. Yes.

11:47:18 3 Q. So what's this portion here that's called security  
11:47:21 4 agreement?

11:47:24 5 A. In order to leave the premises with a horse, whoever --  
11:47:28 6 whether it's a hauler, the owner, their agent, their trainer,  
11:47:32 7 whoever checks out the horse and pays for it or makes  
11:47:38 8 arrangements for payment will receive a green sheet, and then,  
11:47:43 9 whoever they give it to is who can leave the premises with the  
11:47:46 10 horse. They have to pass through security.

11:47:49 11 Q. Okay. So in this case, that person is Fernando Garcia?

11:47:52 12 A. Actually, the horse was officially released to.

11:47:56 13 Q. Fernando Garcia for Blues Girls Choice?

11:47:58 14 A. Yes.

11:47:58 15 Q. And then, the form says, I intend to move this animal to,  
11:48:06 16 and who fills in the location of where the animal goes?

11:48:11 17 A. The person -- the cashier fills out the form, they ask,  
11:48:15 18 where are you taking the horse?

11:48:16 19 Q. So in this case, the horse is going to Lexington, Oklahoma?

11:48:19 20 A. According to that. Yes.

11:48:20 21 Q. And are you familiar with where Jose Trevino's ranch is?

11:48:24 22 A. Yes.

11:48:25 23 Q. Is that Lexington, Oklahoma?

11:48:27 24 A. Yes.

11:48:29 25 Q. I'm showing you the security agreement for Devil Ridge.

11:48:36 1 Tremor Enterprises, it says, Fernando Garcia, again, signing for  
11:48:39 2 that animal?

11:48:39 3 A. Yes.

11:48:40 4 Q. Does it appear to be going back to Lexington, Oklahoma?

11:48:43 5 A. Yes.

11:48:44 6 Q. That was Bates 133396, your Honor.

11:48:54 7 And this is the security agreement for Forty Force,  
11:48:58 8 another Tremor horse, correct?

11:48:59 9 A. Yes.

11:49:00 10 Q. And is Fernando Garcia signing the security agreement for  
11:49:04 11 that?

11:49:04 12 A. Yes.

11:49:05 13 Q. In this case, there is no location where it's going?

11:49:08 14 A. They failed to fill that part out.

11:49:15 15 Q. And finally, this is a security agreement for Number One  
11:49:19 16 Cartel. Again, is that Mr. Fernando Garcia?

11:49:21 17 A. Yes.

11:49:22 18 Q. And where is that horse going?

11:49:24 19 A. It says, Lex, Oklahoma. So.

11:49:29 20 Q. Consistent with Lexington, Oklahoma?

11:49:31 21 A. Yes.

11:49:32 22 Q. Pass the witness, your Honor.

11:49:41 23 MR. FINN: Have a safe flight home. No questions, your  
11:49:43 24 Honor.

11:49:48 25 MR. ESPER: Nothing, your Honor.

RE-CROSS EXAMINATION

BY MR. WOMACK:

Q. I'll make sure we're clear on this.

You would see Fernando Garcia in your office at Heritage Place more often than you would see Carlito, Carlos, whatever his name is, Nayen, correct?

A. Somewhat, yes.

Q. You told us that sometimes you would see Fernando there by himself.

A. Occasionally.

Q. Or other people?

A. Right.

Q. But you remember that whenever Nayen came in, Fernando would come and translate for him?

A. Yes. I never heard him speak English.

Q. Nayen?

A. Correct.

Q. Okay. But you saw Fernando there other times when Nayen wasn't even there.

A. Yes.

Q. And you know that Fernando himself bought horses for himself?

A. I don't remember specifically.

Q. Okay. The government showed you -- I'll use one as an example. The security agreement on hip No. 478 Devil Ridge and

11:51:20 1 Fernando signed as the buyer, correct? I mean, he signed that  
11:51:27 2 block?

11:51:27 3 A. Yeah.

11:51:28 4 Q. Actually, I guess it's not his signature, is it?

11:51:30 5 A. No. That's just his handwritten name. His signature is --

11:51:33 6 I mean, I get that's the signature down by the -- where it says

11:51:35 7 buyers and the X. That was filled out by one of the clerks.

11:51:39 8 Q. And by looking at that form, we don't know if Fernando was

11:51:43 9 the buyer, the agent for the buyer or a trainer, correct?

11:51:49 10 A. True.

11:51:51 11 Q. We know that he is the one that came into the office to make

11:51:55 12 arrangements to take the horse?

11:51:56 13 A. Yes.

11:51:57 14 Q. Okay. And he could be in any capacity. But what we know is

11:52:01 15 that for those horses, he was the guy that was in charge of

11:52:04 16 getting the horse?

11:52:05 17 A. Yes.

11:52:06 18 Q. Okay. And although the government showed you four of them,

11:52:10 19 you know from your own experience Fernando has been in your

11:52:14 20 office and has had his name on lots of other horses?

11:52:17 21 A. Yes.

11:52:18 22 Q. Okay. And are you aware that he had his own company Garcia

11:52:29 23 Bloodstock and Racing?

11:52:32 24 A. No.

11:52:32 25 Q. Okay. You're not familiar with that particular company?

11:52:35 1 A. No.

11:52:36 2 Q. Okay. Thank you. No further questions.

11:52:56 3 MR. ESPER: Nothing further, your Honor.

11:52:57 4 MR. MAYR: None.

11:52:59 5 MR. GARDNER: Nothing further, your Honor.

11:53:01 6 MR. FINN: No objection.

11:53:04 7 THE COURT: You may be excused.

11:53:10 8 MR. GARDNER: Your Honor, I forgot to offer

11:53:13 9 Government's Exhibit 404 for demonstrative purposes into the

11:53:16 10 record, or into the clerk.

11:53:25 11 THE COURT: 404 is received as a demonstrative

11:53:27 12 evidence. Who's the next witness, counsel?

11:53:36 13 MS. FERNALD: Andrew Farabow.

11:53:38 14 THE COURT: About how long?

11:53:40 15 MS. FERNALD: He's a custodian witness. We're about to

11:53:44 16 start custodians.

11:53:45 17 THE COURT: Invite him in.

11:53:46 18 MS. FERNALD: Thank you.

11:54:10 19 (Witness sworn.)

11:54:23 20 THE COURT: I want you to tell us, please, sir, your

11:54:28 21 full name and spell your last.

11:54:29 22 THE WITNESS: My name is Andrew Farabow. That's

11:54:34 23 F-A-R-A-B-O-W.

11:54:34 24 ANDREW FARABOW, called by the Government, duly sworn.

11:54:37 25

DIRECT EXAMINATION

BY MS. FERNALD:

Q. And what do you do for a living, sir?

A. I'm a special agent with the FBI. I'm assigned to the Oklahoma City Division.

Q. Can you tell the ladies and gentlemen of the jury a little bit about your background?

A. I've been a special agent with the FBI for over 18 years. I've been in Oklahoma for approximately 18 years.

Q. And what kind of cases have you done over the 18 years of your employment with the FBI?

A. A wide variety of criminal cases.

Q. Tell me a little bit about your training and your experience with the FBI.

A. Well, like all agents, I went through new agents training for 16 weeks at Quantico, and after that, I was assigned to Oklahoma City. And as I said, I've worked wide variety of criminal cases during my 18 years with the FBI.

Q. Okay. Were you assigned to coordinate the arrest and search warrant in Lexington, Oklahoma in reference to Jose Trevino?

A. Yes, ma'am. I was.

Q. And approximately when did that occur?

A. The search warrant was served in June of 2012. I was assigned to assist in the case in May of 2012.

Q. Can you tell the jury a little bit about -- have you been



11:55:58 1 involved in a large investigation with multi-jurisdictions  
11:56:02 2 before?

11:56:03 3 A. Yes, I have.

11:56:04 4 MR. FINN: Judge, excuse me, I'm going to object to  
11:56:06 5 relevance. He's a records custodian, I believe.

11:56:10 6 MS. FERNALD: He coordinated the operational plan, and  
11:56:12 7 I'm just going over operation plans.

11:56:14 8 THE COURT: All right. Permit it at this point.

11:56:17 9 Q. (BY MS. FERNALD) Have you been involved in investigations  
11:56:20 10 with different -- where evidence is collected in different  
11:56:23 11 jurisdictions?

11:56:24 12 A. Yes, ma'am.

11:56:25 13 Q. And where arrests were made in different jurisdictions?

11:56:28 14 A. Yes, ma'am.

11:56:29 15 Q. There's usually the lead case agent; is that correct?

11:56:32 16 A. Yes.

11:56:33 17 Q. Can you tell me how that lead case agent gets to every  
11:56:36 18 location to execute those search warrants, or do they rely upon  
11:56:40 19 their field offices to assist?

11:56:42 20 A. They rely upon agents in other field offices to assist in  
11:56:46 21 their case.

11:56:47 22 Q. And do you know Special Agent Scott Lawson with the FBI?

11:56:51 23 A. Yes, ma'am.

11:56:52 24 Q. He's in the courtroom today, correct?

11:56:54 25 A. Yes, he is.

11:56:55 1 Q. Is he the one that called and asked for you to assist him on  
11:56:58 2 this case?

11:56:58 3 A. Yes, he was.

11:57:00 4 Q. Okay. Tell me exactly what you did in order to assist on  
11:57:03 5 this particular case, starting in May of 2012.

11:57:06 6 A. Well, I received background information from Agent Lawson.  
11:57:11 7 Eventually, I obtained the search warrant for the Trevino  
11:57:15 8 residence based upon information that was forwarded to me by the  
11:57:19 9 case agents in this investigation. And then, as I said before, I  
11:57:23 10 helped coordinate the execution of the warrants.

11:57:26 11 Q. Was your role pretty limited in this case, or do you know  
11:57:29 12 about the investigation of this case?

11:57:32 13 A. It was limited in the sense that I obtained the search  
11:57:37 14 warrant and helped coordinate the execution of the warrants.  
11:57:41 15 Since that date, I have not been involved in the investigation.

11:57:44 16 Q. Can you tell the jury just very briefly, what do you do  
11:57:49 17 prior to the search warrant? Y'all just all run in and execute  
11:57:53 18 the warrant? Or what do you do prior to the search warrant?

11:57:55 19 A. Typically prior to a search warrant, we prepare an  
11:57:58 20 operations order that lists the specific roles and  
11:58:02 21 responsibilities of everybody that's going to participate. We  
11:58:05 22 also have a briefing to go over the procedures that are to be  
11:58:09 23 utilized during the execution of the search warrant.

11:58:14 24 Q. How many people participated in this particular search  
11:58:18 25 warrant?

11:58:18 1 A. Over 100.

11:58:19 2 Q. And did you have a vast area to cover?

11:58:22 3 A. Yes. It was a ranch.

11:58:25 4 Q. I'm showing you what has been previously marked as  
11:58:30 5 Government's Exhibit 306. Take a look at that.

11:58:34 6 A. Yes, ma'am.

11:58:35 7 Q. Do you recognize that?

11:58:36 8 A. I do.

11:58:36 9 Q. What do you recognize it to be?

11:58:38 10 A. This is an aerial photograph of the ranch.

11:58:40 11 Q. Does it fairly and accurately depict the area at the time  
11:58:44 12 that you executed the search warrant?

11:58:46 13 A. Yes, ma'am.

11:58:49 14 Q. Move for the introduction of Government's Exhibit 306.

11:58:57 15 MR. FINN: No objection, your Honor.

11:58:58 16 THE COURT: 306 is received.

11:59:03 17 Q. (BY MS. FERNALD) And is this the area in which you actually  
11:59:24 18 had to execute the search warrant in this particular case?

11:59:27 19 A. Yes, ma'am.

11:59:34 20 Q. Did you have any other concerns, not only with the search of  
11:59:38 21 the area, but did you have any other concerns with the animals  
11:59:41 22 being on the property?

11:59:42 23 A. Yes. We did.

11:59:43 24 Q. Okay. What was the weather like in June of 2012?

11:59:49 25 A. It was hot.

11:59:50 1 Q. Okay. So what was your first priority as y'all executed the  
11:59:55 2 search of the ranch? I assume --

11:59:58 3 MR. FINN: Judge, objection. Relevance. Weather?

12:00:03 4 THE COURT: It's always hot in June. Let's go.

12:00:09 5 Q. (MS. FERNALD) I'm showing you now what has previously been  
12:00:13 6 marked as Government's Exhibit 370A through P. Can you take a  
12:00:22 7 chance to look at those?

12:00:54 8 A. Yes, ma'am.

12:00:55 9 Q. Do you recognize those photographs?

12:00:56 10 A. I do. Those are photos of the premises.

12:00:58 11 Q. Okay. Move for the introduction of Government's Exhibit  
12:01:04 12 370A through P.

12:01:11 13 THE COURT: Through P or G?

12:01:13 14 MS. FERNALD: P as in Paul.

12:01:42 15 MR. FINN: No objection.

12:01:44 16 THE COURT: 370A through P are received.

12:01:48 17 Q. (BY MS. FERNALD) On that particular day, how many structures  
12:01:58 18 -- maybe I should have you go through and identify this. My  
12:02:00 19 apologies. I'm going to show you how you can draw on the screen  
12:02:19 20 so you can help me point out different structures, please.

12:02:23 21 A. Okay.

12:02:37 22 Q. Can you show us the different structures that are on this  
12:02:39 23 particular photograph?

12:02:41 24 A. Well, in total, there were approximately 28 structures,  
12:02:45 25 including these small buildings that are in various places on the

12:02:51 1 property.

12:02:52 2 Q. And you're highlighting the upper portion of the photograph  
12:02:58 3 at this time; is that correct?

12:02:58 4 A. Correct.

12:02:59 5 Q. Okay. And what other structures were there?

12:03:02 6 A. The large barn down here, which contained the business  
12:03:07 7 office, the primary residence up here, the doublewide  
12:03:15 8 manufactured home over here. There were two trailers over here,  
12:03:20 9 a barn that was in the process of being built right over here,  
12:03:24 10 and then, some smaller out buildings up here.

12:03:27 11 Q. And because you're saying here, I just want to make sure  
12:03:30 12 that the record accurately reflects that the main residence is  
12:03:33 13 contained in the upper left-hand corner, is that correct, of this  
12:03:37 14 diagram or this photograph?

12:03:38 15 A. Correct.

12:03:38 16 Q. And there's some structures behind it, correct?

12:03:41 17 A. Yes.

12:03:42 18 Q. And also, there's a large linear silver line going down on  
12:03:47 19 the left-hand side, closer to the center that you described as  
12:03:51 20 the barn; is that correct?

12:03:52 21 A. Yes, ma'am.

12:03:53 22 Q. And there is a doublewide beneath it on the photograph and  
12:03:57 23 then, behind it, some trailers; is that correct?

12:04:00 24 A. Correct.

12:04:00 25 Q. All right. And this was the area that was searched,

12:04:04 1 correct?

12:04:05 2 A. Yes, ma'am.

12:04:06 3 Q. On June the 12th of 2012, when you made entry, was this

12:04:10 4 entry without incident, as we call it?

12:04:12 5 A. Yes, ma'am.

12:04:13 6 Q. It went pretty smooth?

12:04:14 7 A. It did.

12:04:15 8 Q. Was the arrest of Mr. Trevino made at that time?

12:04:19 9 A. Yes, it was.

12:04:21 10 Q. Can you tell the ladies and gentlemen of the jury after you

12:04:23 11 got to the facilities, what did you do at that point?

12:04:27 12 A. Then we began the search.

12:04:30 13 Q. Who searched?

12:04:33 14 A. FBI agents and IRS agents. We had six different search

12:04:38 15 teams assigned to various structures on the property.

12:04:41 16 Q. And how were those -- just briefly because you have an

12:04:46 17 evidence team that comes in and actually collects evidence; is

12:04:49 18 that correct?

12:04:49 19 A. Correct. And for five of those teams, the designated team

12:04:54 20 leader was a member of the evidence response team, and those

12:04:58 21 individuals had received specialized training in collecting and

12:05:01 22 handling evidence.

12:05:03 23 Q. And do you know whether or not those individuals are present

12:05:06 24 when you testify?

12:05:08 25 A. Yes, they are.

12:05:09 1 Q. What was your job, however?

12:05:10 2 A. My job was just to help coordinate overall operation. I was  
12:05:14 3 not assigned to a particular search team.

12:05:17 4 Q. I'm showing you now just real briefly what has been marked  
12:05:22 5 -- can you clear that screen? Thank you. As Government's  
12:05:27 6 Exhibit 370A. What is this a photograph of?

12:05:32 7 A. That is the cover sheet of the photo log.

12:05:37 8 Q. It's got a shadow on it. It looks like to me when the  
12:05:39 9 picture was made, there was a shadow on it; is that correct?

12:05:42 10 A. It appears to be. Yes.

12:05:44 11 Q. Government's Exhibit 370B.

12:05:56 12 A. That's the main residence.

12:05:59 13 Q. As I go through these, if you'll just identify. 370C.

12:06:08 14 A. That's part of the large barn on the property.

12:06:12 15 Q. The large linear silver area that we discussed?

12:06:16 16 A. Yes, ma'am.

12:06:17 17 Q. 370D?

12:06:19 18 A. That's the same location from a different angle.

12:06:27 19 Q. E, 370E?

12:06:29 20 A. Again, part of the same barn or, actually, that may be the  
12:06:35 21 barn that's adjacent to it.

12:06:39 22 Q. I'm pointing to the silver structure right there.

12:06:42 23 A. Okay. Yes.

12:06:45 24 Q. 370F?

12:06:53 25 A. Yes. That's the barn.

12:07:00 1 Q. 370G?

12:07:02 2 A. That's the interior of the same barn.

12:07:05 3 Q. Were there any offices located on the interior of this barn?

12:07:09 4 A. Adjacent to it, yes, within the same building.

12:07:20 5 Q. 370H?

12:07:22 6 A. That's the office space of the barn.

12:07:26 7 Q. The one we were just referring to?

12:07:28 8 A. Yes, ma'am.

12:07:28 9 Q. The interior?

12:07:30 10 A. Yes.

12:07:30 11 Q. 370I?

12:07:40 12 A. That's the interior of the same barn.

12:07:48 13 Q. 370J?

12:07:53 14 A. That's within the same structure within that same barn or

12:07:58 15 the office area.

12:08:02 16 Q. 370K?

12:08:07 17 A. That's a trophy that was, I believe, in the office area.

12:08:17 18 Q. 370L?

12:08:21 19 A. That's a photograph of a certificate that was displayed in

12:08:24 20 the office area.

12:08:25 21 Q. Do you know who Shalyn Bliss is, a veterinarian?

12:08:29 22 A. Yes. I know that she was -- she was the veterinarian for

12:08:32 23 the horses on the premises.

12:08:37 24 Q. 370M?

12:08:41 25 A. Those are two of the trailers that were located on the



12:08:45 1 premises.

12:08:47 2 Q. I'm sorry, these were behind where?

12:08:52 3 A. They were behind -- they were to the west of the long barn.

12:09:02 4 Q. 370N?

12:09:07 5 A. That's one of the trailers that was on the property.

12:09:11 6 Q. 370O?

12:09:14 7 A. Another trailer that was on the property.

12:09:20 8 Q. And 370P?

12:09:22 9 A. That's the doublewide manufactured home that was towards the

12:09:27 10 north side of the property.

12:09:34 11 Q. Did you collect any evidence in this case?

12:09:37 12 A. I did collect a few items.

12:09:40 13 Q. Last night, did I ask for you to review the evidence that

12:09:45 14 you collected in this case?

12:09:46 15 A. Yes.

12:09:47 16 Q. Where was that evidence located?

12:09:48 17 A. At the U.S. Attorney's Office.

12:09:50 18 Q. And which U.S. Attorney's Office? What city?

12:09:53 19 A. Here in Austin.

12:09:54 20 Q. Okay. What did you do over at the U.S. Attorney's Office,

12:09:58 21 our office yesterday afternoon?

12:10:01 22 A. I looked at two of the items that I had seized.

12:10:05 23 Q. Okay. And the items that you seized, were they numbered in

12:10:10 24 a certain way?

12:10:11 25 A. Yes, they were.

12:10:13 1 Q. And did we have a B number associated with a particular  
12:10:17 2 item?

12:10:18 3 A. Yes.

12:10:19 4 Q. Okay. You have a box in front of you, or you brought one  
12:10:22 5 in.

12:10:23 6 A. Yes, ma'am. I do.

12:10:25 7 Q. What is the B item number on that particular box?

12:10:29 8 A. This one is 1B-154.

12:10:32 9 Q. And did you actually seized the items that were contained in  
12:10:35 10 that box?

12:10:35 11 A. I did take custody of them. Yes.

12:10:37 12 Q. Okay. How do you know that that's the same box that you  
12:10:44 13 seized the items or took custody of the items that is here today?

12:10:48 14 A. Because I labeled it and I initialed it.

12:10:51 15 Q. And how do you do that?

12:10:52 16 A. I put the date that the items were seized, my initials, the  
12:10:58 17 case file number, description of the item, and where the item was  
12:11:03 18 found. Then I placed the items in this box, and I sealed the box  
12:11:08 19 and initialed the tape.

12:11:09 20 Q. Will you pull that box up, please? And I see on the outside  
12:11:19 21 of the box that you're pulling up right now, there are some  
12:11:22 22 numbers associated with it. Will you go through that, please?

12:11:27 23 A. Yes, ma'am. The case file number is written on the side of  
12:11:30 24 the box. That's 245 C-SA-62996. Also, on the side of the box is  
12:11:41 25 the 1B number that it was assigned, which is 1B-154. And then,

12:11:46 1 the markings that I've described are on the top of the box.

12:11:52 2 Q. And you put your signature on it, and there's also a piece  
12:11:54 3 of red tape going over the top of the box that we're looking at.

12:11:59 4 What is that?

12:11:59 5 A. That's the evidence tape that I used to seal the box.

12:12:03 6 Q. The B numbers in this particular -- is this the only box  
12:12:08 7 that was seized?

12:12:08 8 A. No, ma'am.

12:12:09 9 Q. Did you have a series of B numbers assigned in this  
12:12:12 10 particular case?

12:12:13 11 A. I seized several items, yes.

12:12:15 12 Q. Do you know that if there were numbers assigned to certain B  
12:12:19 13 boxes in this case?

12:12:20 14 A. Yes, I do.

12:12:21 15 Q. Okay. And is that true?

12:12:23 16 A. Yes.

12:12:24 17 Q. What would you have done with that box right there?

12:12:30 18 A. I kept this in my custody until I took it to the Oklahoma  
12:12:36 19 City office and released custody to an evidence control  
12:12:39 20 technician, and then, subsequently, I requested that this and the  
12:12:43 21 other items that I had recovered be Fed Ex-ed down to the Austin  
12:12:48 22 office of the FBI -- or, rather, the San Antonio office of the  
12:12:51 23 FBI.

12:12:52 24 Q. And, in fact, you seized three different boxes relevant to  
12:12:56 25 this, 1B-152, 1B-153 and 1B-154; is that correct?

12:13:03 1 A. Yes. Three different items. They weren't all packaged in  
12:13:07 2 boxes. 1B-152 was two large photographs. On those, I just  
12:13:15 3 labeled the back of the photographs because I did not have boxes  
12:13:19 4 that would accommodate them.

12:13:21 5 Q. When the boxes are taken to the FBI office in Oklahoma City,  
12:13:27 6 is that a secure location?

12:13:28 7 A. Yes, ma'am.

12:13:29 8 Q. And although these items are not inherently illegal, do you  
12:13:36 9 still maintain a chain of custody on them?

12:13:37 10 A. Yes, we did.

12:13:38 11 Q. And why do you do that?

12:13:39 12 A. So that we can state definitively who possessed them and  
12:13:44 13 when.

12:13:46 14 Q. Pass the witness, your Honor.

12:14:05 15 CROSS-EXAMINATION

12:14:05 16 BY MR. FINN:

12:14:13 17 Q. Agent, my name is David Finn, F-I-N-N. I don't believe  
12:14:16 18 we've ever met or spoken, have we?

12:14:18 19 A. No, sir. Not to my knowledge.

12:14:19 20 Q. My client, Jose Trevino-Morales, was polite and courteous  
12:14:23 21 during this entire search, correct? He didn't give you any guff  
12:14:28 22 or a hard time?

12:14:29 23 A. Not to my knowledge. No, sir.

12:14:30 24 Q. Well, you would know if he did. To your knowledge, he was  
12:14:34 25 polite and diplomatic and treated y'all with respect, correct?

12:14:38 1 A. Sir, I never had any direct contact with him, but I never  
12:14:42 2 received any complaints about his behavior.

12:14:43 3 Q. So if the members of the jury wanted to know about my  
12:14:47 4 client's demeanor, meaning how he appeared in his attitude and  
12:14:51 5 his words and his actions, should I ask Special Agent Scott  
12:14:55 6 Lawson? Would he be a better person to ask?

12:14:58 7 A. Yes, sir. I believe he would.

12:14:59 8 Q. And SSA Manuel Perez, Jr.?

12:15:04 9 A. I don't know.

12:15:06 10 Q. TFO or Task Force Officer Ernesto Elizondo, should I ask  
12:15:13 11 those folks how my client behaved?

12:15:14 12 A. With regard to the latter two, I know that they participated  
12:15:17 13 in the operation, but I don't know what the extent of their  
12:15:18 14 contact was with Mr. Trevino.

12:15:20 15 Q. You told the jury on direct, a moment ago, there were about  
12:15:24 16 100 agents involved in this operation, right?

12:15:28 17 A. Approximately 100 different people. Some were agents, some  
12:15:32 18 were not agents.

12:15:33 19 Q. And a couple of helicopters in the air, correct?

12:15:37 20 A. I don't know. I know that there was one unit of air support  
12:15:41 21 that was utilized.

12:15:42 22 Q. Okay. One unit of air support. Can you translate to normal  
12:15:46 23 language? What does that mean?

12:15:47 24 A. I believe it was a helicopter, but I'm not certain.

12:15:50 25 Q. Okay. Tell the members of the jury -- and, you know, you've

12:15:56 1 got 100 people out there, so this is a pretty dad-gum official  
12:16:01 2 search, right?

12:16:01 3 A. It was designed to be, yes.

12:16:02 4 Q. Okay. It was designed to be. Let me ask the question  
12:16:05 5 again. This was a pretty thorough search with about 100 agents  
12:16:10 6 from different agencies, correct?

12:16:12 7 A. Correct.

12:16:13 8 Q. So it's not like if somebody squirrelled away a million  
12:16:17 9 dollars of cash in their attic or in their basement that you guys  
12:16:21 10 are going to miss it because you're trained to look everywhere,  
12:16:24 11 correct?

12:16:25 12 A. Well, I hope we looked everywhere.

12:16:29 13 Q. Do you have any reason to believe that you missed anything?

12:16:31 14 A. I do not.

12:16:32 15 Q. You do not?

12:16:33 16 A. I do not.

12:16:34 17 Q. Thank you.

12:16:35 18 And when you're doing a search, safe to say that the  
12:16:41 19 occupants of the house are not able to, you know, prevent you  
12:16:46 20 from going in a bedroom, prevent you from going into a garage.  
12:16:49 21 Jose Trevino-Morales and his family's basically told, get out of  
12:16:54 22 the way, this is a federal search warrant that's being executed,  
12:16:58 23 correct?

12:16:59 24 A. We had access to the entire premises. Yes.

12:17:01 25 Q. Entire premises, right?

12:17:04 1 A. Right.

12:17:04 2 Q. And if you wanted to get into a locked closet, or a locker,  
12:17:08 3 or a trailer, you would have a way of getting in there to look  
12:17:12 4 for evidence, right?

12:17:13 5 A. Yes, sir.

12:17:15 6 Q. Tell the members of this jury how much cash you found on  
12:17:20 7 this property during your search.

12:17:23 8 A. Sir, I don't know offhand.

12:17:24 9 Q. Let me see if I could refresh your recollection. None.

12:17:29 10 Tell the members of the jury about the AK-47 machine  
12:17:33 11 guns and assault weapons that you found on this property.

12:17:36 12 A. I don't believe there were any found.

12:17:37 13 Q. That's correct. Tell the members of the jury about the  
12:17:41 14 Porsche, the Lamborghini --

12:17:43 15 MS. FERNALD: Excuse me, I'm going to interrupt, but I  
12:17:45 16 would just ask the defense counsel not be so argumentative with  
12:17:48 17 the witness. Just ask him a question.

12:17:50 18 THE COURT: Well, it's cross-examination. Let's keep  
12:17:52 19 our comments --

12:17:54 20 MR. FINN: Got it, Judge.

12:17:55 21 Q. (BY MR. FINN) Tell the members of the jury, if you would,  
12:17:57 22 about the fancy luxury automobiles and vehicles at the residence.

12:18:02 23 A. There were several vehicles at the residence. I don't know  
12:18:06 24 that I would classify any as fancy luxury vehicles.

12:18:09 25 Q. Right. They're basically beat-up pickup trucks used for a

12:18:13 1 farm or at a real ranch, correct?

12:18:15 2 A. There were pickup trucks there. I don't recall the nature  
12:18:19 3 of all the vehicles that were there.

12:18:20 4 Q. Okay. Tell the members of the jury -- and you knew -- well,  
12:18:26 5 did you know that my client had a concealed handgun permit?

12:18:30 6 A. Yes, sir, I did.

12:18:31 7 Q. And you all found one handgun in his bedroom under his  
12:18:36 8 mattress, correct?

12:18:36 9 A. Yes, sir. I believe that's true.

12:18:38 10 Q. And they don't just give concealed handgun permits away, do  
12:18:42 11 they? I mean, you've got to go through the class, you've got to  
12:18:45 12 be qualified, you've got to make sure you don't have a criminal  
12:18:47 13 history, things like that, correct?

12:18:48 14 A. I believe so. Yes.

12:18:49 15 Q. I mean, this -- based on your impression, real horses, real  
12:19:03 16 ranch, real work, real people, correct? This looked like what it  
12:19:09 17 was, a horse ranch, correct?

12:19:11 18 A. It was a horse ranch. Yes.

12:19:13 19 Q. And there were a bunch of horses out there.

12:19:15 20 And by the way, you showed a trailer or the government  
12:19:20 21 did earlier. Isn't that the trailer where the workers who were  
12:19:23 22 building the improvements on the farm were living, the workers  
12:19:25 23 were staying in that little trailer?

12:19:27 24 A. There were some workers staying in the trailer. I'm not  
12:19:29 25 sure what they were doing on the premises.



12:19:31 1 Q. Okay. Did you interview any of these workers that were in  
12:19:35 2 the trailer or working on the property?

12:19:37 3 A. I personally did not.

12:19:40 4 Q. So if I wanted to ask about, for example, what Jose said to  
12:19:46 5 the FBI during this search, I would need to ask that to another  
12:19:51 6 witness, not you, because you didn't interview my client,  
12:19:54 7 correct?

12:19:54 8 A. Correct.

12:19:56 9 Q. Do you know who did it?

12:19:59 10 A. Not for certain. I believe Agent Lawson participated in the  
12:20:03 11 interview.

12:20:03 12 Q. It's a pretty lengthy interview, wasn't it?

12:20:06 13 A. I don't know.

12:20:06 14 Q. You don't know?

12:20:07 15 A. No, sir. I wasn't there.

12:20:09 16 Q. Where were you?

12:20:10 17 A. On the premises.

12:20:13 18 Q. Where on the premises? What does that mean? Where?

12:20:15 19 A. I moved around the premises. I was helping to coordinate  
12:20:18 20 the operation.

12:20:20 21 Q. Okay. I don't mean to be difficult, okay? Where were you?

12:20:26 22 A. At different points during the day, I was at different  
12:20:29 23 buildings.

12:20:33 24 Q. Were you the one that pulled aside my client's 13-year-old  
12:20:39 25 daughter Rebecca and tried to interrogate her without mom or dad

12:20:42 1 being present?

12:20:43 2 A. No, sir. I was not.

12:20:44 3 Q. That wouldn't be very kosher, would it?

12:20:48 4 MS. FERNALD: Objection, your Honor. Argumentative.

12:20:50 5 MR. FINN: That wasn't -- I could rephrase.

12:20:52 6 Q. (BY MR. FINN) That would not be appropriate to interview a

12:20:55 7 13-year-old girl without the parents being present, would it?

12:20:58 8 A. I think it would depend on the circumstances.

12:21:01 9 Q. And they were asking her, we want your uncles. Where are

12:21:05 10 your uncles? Do you remember that?

12:21:07 11 A. I don't. I have no knowledge of that.

12:21:09 12 Q. All right. Have a good weekend. That's all, Judge. Thank

12:21:12 13 you.

12:21:15 14 THE COURT: Anybody else?

12:21:16 15 MR. WOMACK: No, sir.

12:21:17 16 MR. ESPER: No.

12:21:19 17 MS. FERNALD: Your Honor, the government would call

12:21:21 18 Scott Thagard.

12:21:24 19 THE COURT: May this witness be excused?

12:21:26 20 MR. FINN: Yes, your Honor. No objection.

12:21:59 21 (Witness sworn.)

12:22:18 22 THE COURT: Would you tell me your full name and spell

12:22:26 23 your last, please?

12:22:27 24 THE WITNESS: My name is Scott Thagard. The last name

12:22:30 25 is spelled, T-H-A-G-A-R-D.

12:22:38 1 THE COURT: You may proceed, counsel.

12:22:39 2 SCOTT THAGARD, called by the Government, duly sworn.

12:22:39 3 DIRECT EXAMINATION

12:22:39 4 BY MS. FERNALD:

12:22:41 5 Q. Thank you.

12:22:41 6 Can you tell the ladies and gentlemen of the jury what  
12:22:43 7 you do for a living?

12:22:44 8 A. I'm a forensic accountant for the FBI.

12:22:47 9 Q. And where are you stationed right now?

12:22:49 10 A. Muskogee, Oklahoma.

12:22:52 11 Q. How long have you done that?

12:22:52 12 A. Forensic accountant I've done for little over a year.

12:22:57 13 Financial analyst, been with the FBI for 15 years.

12:23:01 14 Q. And in your course of being with FBI, do you participate in  
12:23:06 15 what is called a evidence response team?

12:23:09 16 A. I do.

12:23:09 17 Q. Okay. And do you go by the acronym?

12:23:13 18 A. ERT.

12:23:13 19 Q. ERT. So we hear that a lot. What is the purpose of ERT?

12:23:19 20 A. It's basically just a group that's organized to go out and  
12:23:22 21 conduct searches or collect evidence from searches or crime  
12:23:27 22 scenes.

12:23:28 23 Q. And do you have a systematic way of doing that with the FBI?

12:23:34 24 A. Yes.

12:23:34 25 Q. Did you participate in the search warrant of -- in

12:23:39 1 Lexington, Oklahoma on June the 12th of 2012?

12:23:42 2 A. I did.

12:23:44 3 Q. And were you one of the team leaders?

12:23:46 4 A. I was.

12:23:47 5 Q. Can you tell the ladies and gentlemen of the jury, what does  
12:23:50 6 it mean to be a team leader out at a particular search warrant  
12:23:54 7 location?

12:23:55 8 A. Team leader's just kind of the guy who goes in. He's the  
12:24:00 9 one in charge of the actual search. He will have a team that's  
12:24:05 10 with him. He will be the one who's responsible for dictating to  
12:24:10 11 them what they do. And he'd probably also be the guy who is  
12:24:15 12 going to be taking evidence with him when it's completed.

12:24:19 13 Q. As -- let's just -- on this particular location, were you  
12:24:23 14 assigned to a building?

12:24:24 15 A. I was.

12:24:25 16 Q. And what was that building?

12:24:27 17 A. I don't know what everybody else is referring to, but I  
12:24:30 18 referred to it as building No. 5.

12:24:31 19 Q. And can you tell the members of the jury what was building  
12:24:34 20 No. 5?

12:24:35 21 A. Building No. 5 was a very large horse facility with lots of  
12:24:42 22 stables, and there was a central area where there was an office  
12:24:46 23 and, also, a vet area.

12:24:49 24 Q. I'm showing you what has previously been marked and  
12:24:52 25 identified and admitted as Government's Exhibit 306. It's an

12:24:57 1 aerial photo shot. Do you recognize this photograph?

12:24:59 2 A. I do.

12:24:59 3 Q. And when you referred to building 5, are you referring to

12:25:03 4 the building that is the long, rectangular-shaped, silver

12:25:10 5 building in almost the center of the photograph?

12:25:12 6 A. That is the building, yes.

12:25:13 7 Q. So you had the big building, then, did you not?

12:25:16 8 A. I did. Yes.

12:25:17 9 Q. Can you tell the ladies and gentlemen of the jury how you

12:25:19 10 and your team went in and collected the evidence out of this big

12:25:22 11 building?

12:25:23 12 A. Okay. I was staged off scene and waited for the building to

12:25:30 13 be cleared to make sure that it was safe for us to come in. Once

12:25:36 14 I received a phone call, I brought my team into the site. And as

12:25:40 15 the team leader, the first thing I would do was go into the

12:25:43 16 building and just have a preliminary survey, just to see what we

12:25:49 17 were dealing with. So I had assigned a photographer to start

12:25:55 18 taking photographs of the facility as I was going in and just to

12:26:00 19 see what we were up against.

12:26:05 20 I went in, I looked at it and at that point, I

12:26:09 21 determined what our game plan was going to be, and I came back

12:26:13 22 out of the building, grabbed my team together, told them what I

12:26:17 23 had seen, and what we were going to do, and how we were going to

12:26:20 24 do it.

12:26:20 25 Q. And does that typically happen -- I say typically. Does

12:26:23 1 that happen with each other team that searches each other's  
12:26:27 2 sites?

12:26:27 3 A. That is typically the way it works with ERT.

12:26:30 4 Q. Okay. So what happened that day? You did do all those  
12:26:34 5 things that day?

12:26:35 6 A. I did. Yes.

12:26:36 7 Q. Okay. And tell me about the collection of the evidence, how  
12:26:38 8 did that go?

12:26:39 9 A. Basically what would happen is that I'd ask the people to --  
12:26:45 10 everybody had been briefed as to what type of items we were  
12:26:47 11 looking for. We began our search, individual team members would  
12:26:54 12 find something, and then, they would come to me. I would look at  
12:26:59 13 it and I'd say, yeah, that's something that is applicable to the  
12:27:02 14 warrant. That's something we need to take, or no, I don't think  
12:27:05 15 it works.

12:27:07 16 So each individual team members would find items, they  
12:27:10 17 would bring it to my attention, we would discuss it, and if it  
12:27:14 18 was an item we were taking, we would box it up or put it in some  
12:27:19 19 sort of container. We would seal the -- seal the container and  
12:27:26 20 then, there is a -- we have seven items that we put on each  
12:27:31 21 individual piece of evidence at the scene.

12:27:34 22 Q. And just to make sure, you were assigned to collecting the  
12:27:39 23 evidence in this particular case; is that correct?

12:27:41 24 A. That is correct. Yes.

12:27:42 25 Q. Were you assigned to analysis of the records that you've

12:27:46 1 collected?

12:27:46 2 A. I'm sorry.

12:27:47 3 Q. Were you assigned to analyze -- do an analysis on the  
12:27:50 4 records that you collected?

12:27:51 5 A. No. I was not.

12:27:52 6 Q. Do you know anything about the investigation in this  
12:27:55 7 particular case?

12:27:55 8 A. Very little.

12:27:57 9 Q. When you went to the location or prior to going to the  
12:28:06 10 location, did you have a series of what I'm going to call B  
12:28:09 11 numbers assigned for the collection of evidence?

12:28:12 12 A. When I went to the location?

12:28:15 13 Q. (Moving head up and down.)

12:28:16 14 A. The 1B numbers were assigned after the evidence was  
12:28:20 15 collected.

12:28:21 16 Q. Okay. Can you tell me about that?

12:28:23 17 A. Typically one of the seven items that I was telling you  
12:28:27 18 about that we placed on -- say I take a box of records, I will  
12:28:31 19 give it an item number, and that item number would just be  
12:28:36 20 written on, say, if it's a box, I'll write on the outside of the  
12:28:39 21 box. Once it is transported to our evidence folks, then they  
12:28:43 22 will enter that into an FBI database of some sort, and they will  
12:28:47 23 assign it what is called a 1B number.

12:28:50 24 Q. So how do you ensure that the evidence that you're  
12:28:53 25 collecting at the scene is going to be the same evidence that

12:28:56 1 comes up at trial?

12:29:01 2 A. Well, I mean, my job is to collect the evidence and to seal  
12:29:05 3 it, and then, we go through a chain of custody process to where I  
12:29:13 4 am the first who signed saying, at such and such time, I am  
12:29:16 5 taking this evidence into my custody. I will then transport that  
12:29:21 6 to the evidence folks, and at that point, I will sign off on the  
12:29:25 7 chain of custody, and they will now put it into evidence or into  
12:29:29 8 our evidence, assign it the 1B number; and then, if that item is  
12:29:34 9 something that's going to be used in a hearing, then that item  
12:29:39 10 will be brought before the Court and used as evidence.

12:29:42 11 Q. Do you put your signature on the items when you bring it to  
12:29:45 12 court so you can make sure it was the same box in which you  
12:29:48 13 collected the evidence?

12:29:49 14 A. Yes. Not necessarily a signature but initials.

12:29:52 15 Q. Okay.

12:29:53 16 A. Sometimes you sign it, sometimes you put your initials.

12:29:56 17 Q. Yesterday afternoon, did I ask for you to go to the United  
12:29:59 18 States Attorney's Office here in Austin, look at the evidence  
12:30:02 19 that was seized in this particular case?

12:30:03 20 A. You did.

12:30:04 21 Q. And you brought in a box when you walked into the courtroom  
12:30:08 22 today. Did I ask you to bring a sample of the evidence that you  
12:30:11 23 collected in this particular case?

12:30:12 24 A. Yes, ma'am, you did.

12:30:12 25 Q. Can you put that box up on the table for me, please? It's a



12:30:20 1 banker's box that I'm looking at right now, and it's got some  
12:30:24 2 writing on the outside and on top of it.

12:30:27 3 Can you tell the ladies and gentlemen of the jury about  
12:30:28 4 this particular box and how you can identify that this is the  
12:30:32 5 box, in fact, that you collected evidence from from that  
12:30:36 6 particular building?

12:30:37 7 A. Okay. Take the lid off?

12:30:39 8 This is the top of this box that basically this is  
12:30:44 9 items that we have taken from the search, and I can identify that  
12:30:49 10 this would be the case number, the case we were working on. And  
12:30:53 11 this is building No. 5, which is the large building, and we will  
12:30:58 12 do a diagram sketch of the location we're searching and we will  
12:31:03 13 name it room A, room B, room C. We won't say, like, office, you  
12:31:08 14 know, bathroom, anything. You just say room, room B, room C,  
12:31:13 15 have the address, the date. And this here is the item number  
12:31:16 16 that I assign at the scene. This would be the 1B number that  
12:31:21 17 would be associated with it once it got to evidence. And we will  
12:31:26 18 put a brief description of what is in the box, and then, the  
12:31:29 19 person who located it, put their name and initials. And then, me  
12:31:34 20 the team leader, slash, evidence custodian will also put my name  
12:31:38 21 and initials.

12:31:43 22 Q. Is that correct?

12:31:46 23 A. That is correct.

12:31:46 24 Q. Did I ask you to review the following boxes last night at  
12:31:51 25 the U.S. Attorney's Office?

12:31:52 1 A. Yes, ma'am.

12:31:53 2 Q. 1B-81, 1B-83, 1B-84, 1B-94, 1B-95, 1B-97, 1B-99, 1B-105,  
12:32:11 3 1B-110, 1B-111, 1B-113, 1B-114, 1B-122, 1B-134, and 1B-135. Did  
12:32:25 4 you review those?

12:32:26 5 A. Yes, ma'am. I did.

12:32:27 6 Q. And they all have your signature and markings on those  
12:32:31 7 boxes?

12:32:31 8 A. They do.

12:32:32 9 Q. I wanted to ask you one more question.

12:32:45 10 A. Okay.

12:32:45 11 Q. On this particular box, there's a little red label that's  
12:32:55 12 right there. Did you put that on the box?

12:32:57 13 A. I did not.

12:32:57 14 Q. Okay. So is that the only thing that's different about the  
12:33:02 15 box than when you actually retrieved it?

12:33:07 16 A. That and the 1B-114. I did not put that on there.

12:33:11 17 Q. Okay. Pass the witness.

12:33:21 18 MS. WILLIAMS: No questions.

12:33:24 19 MR. SANCHEZ: No questions, your Honor.

12:33:25 20 MR. WOMACK: No questions.

12:33:26 21 MR. ESPER: I have none, your Honor.

12:33:27 22 MR. MAYR: None.

12:33:28 23 THE COURT: May the witness be excused?

12:33:30 24 MR. FINN: No objection.

12:33:31 25 MR. GARDNER: Your Honor, may we approach?

12:33:37 1 (At the bench, on the record.)

12:33:50 2 MR. GARDNER: Earlier in this case, the government  
12:33:54 3 prepared a stipulation to the following custodial witnesses, and  
12:33:58 4 without naming the party, we were told that, no, you need to  
12:34:03 5 bring the custodians. Five minutes ago, I've been informed that  
12:34:05 6 all parties will now agree, despite the fact the government has  
12:34:10 7 spent a great amount of money bringing the individuals from  
12:34:11 8 California, New Mexico, Dallas, Oklahoma to testify as to simple  
12:34:16 9 evidence custodian, they will now agree. However, they say they  
12:34:18 10 want it in writing. I do not have the stipulation here in court  
12:34:21 11 in writing. But we made an agreement from all these counsel that  
12:34:27 12 I can at least send the witnesses back to their home states,  
12:34:30 13 otherwise, I need to keep them here. I'm more than willing to  
12:34:32 14 stipulate it at this point.

12:34:36 15 MR. MAYR: I have a proposed stipulation in an e-mail  
12:34:39 16 so I could pull it up --

12:34:39 17 THE COURT: I can't get you on the record unless you  
12:34:40 18 get a little closer.

12:34:40 19 MR. MAYR: I think I have the proposed stipulation  
12:34:43 20 which I was going to agree to on my computer. I can print it  
12:34:47 21 out. So if you want to use something in writing, I'll be glad to  
12:34:49 22 make that available.

12:34:50 23 THE COURT: He wants to know if the commitment is  
12:34:52 24 there. I was going to ask at the break if -- why this --

12:34:58 25 MS. WILLIAMS: These are all the boxes.

12:35:00 1 MR. GARDNER: They're all the boxes. They're boxes  
12:35:04 2 that came from the search warrants, multiple search warrants in  
12:35:07 3 California, search warrants in New Mexico, search warrants in two  
12:35:10 4 locations in Austin, the search warrant in Dallas, the search  
12:35:14 5 warrant in Mission, the search warrant in New Mexico. That's  
12:35:17 6 what the stipulation will be to.

12:35:20 7 MR. SANCHEZ: Just so we're clear, not the e-mails that  
12:35:23 8 subpoena --

12:35:23 9 MR. GARDNER: No. Those are separate search warrants.  
12:35:25 10 They are not included in the stipulation.

12:35:28 11 MR. WOMACK: I have no problem.

12:35:31 12 MR. ESPER: I never had a problem.

12:35:32 13 THE COURT: Mr. Esper did respond to me. He's the one  
12:35:34 14 who said he didn't --

12:35:35 15 MR. MAYR: And I've never had a problem.

12:35:37 16 THE COURT: Okay. Well, whether you never have or have  
12:35:40 17 one up until right now, I take it that everybody is in agreement  
12:35:43 18 to the stipulation.

12:35:45 19 MS. WILLIAMS: That's correct, your Honor.

12:35:46 20 MR. GARDNER: Your Honor, I have one more short  
12:35:48 21 witness. She is a basically records custodian for border  
12:35:52 22 crossings. She didn't do any of the data entry. She's just the  
12:35:56 23 custodian of records. She's from Laredo. I don't know what  
12:36:02 24 cross-examination there is so.

12:36:08 25 MR. ESPER: Your Honor, just before you bring the

12:36:10 1 witness, I object to his witness.

12:36:16 2 THE COURT: Can you --

12:36:17 3 MR. ESPER: It's hearsay.

12:36:18 4 THE COURT: Can you remember the objection until  
12:36:21 5 Monday?

12:36:21 6 MR. ESPER: I will, your Honor.

12:36:22 7 THE COURT: All right.

12:36:23 8 MR. GARDNER: Are you sure? I'll write that down for  
12:36:24 9 you.

12:36:26 10 MR. PARRAS: We have no objection to the stuff coming  
12:36:27 11 in. If there's something that they didn't mark or that they are  
12:36:30 12 not admitting and we want in, as long as the records custodian  
12:36:33 13 doesn't have to come back and we'll let them know.

12:36:36 14 MR. GARDNER: Yeah. I made that agreement with Mr.  
12:36:37 15 Esper, too, so.

12:36:38 16 MR. PARRAS: With that understanding.

12:36:40 17 MR. GARDNER: If you want something in the boxes,  
12:36:42 18 time's running out. You've got to let us know.

12:36:46 19 MR. PARRAS: Got it.

12:36:51 20 THE COURT: Members of the jury, they voted  
12:36:53 21 eight-to-zero to let you go home. Actually, one didn't, but I'm  
12:36:57 22 not going to tell you who it was. Remember the instructions.  
12:37:02 23 Going to be hard this weekend. You know, it's going to be hard  
12:37:07 24 to go watch West Virginia play Texas. I don't recommend it. But  
12:37:15 25 remember the instructions so that Monday, you answer those

12:37:18 1 questions. We'll start Monday at 8:30. Y'all have a safe  
12:37:22 2 weekend.

12:37:54 3 (Jury not present.)

12:37:56 4 THE COURT: We are in recess until 8:30 Monday.

12:37:56 5 (Proceedings adjourned.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25